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THE AMERICAN Prospect

LIBERAL INTELLIGENCE

MARCH 2006

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Wingnuts & Iran

Sam Rosenfeld:
Boehner the Faker

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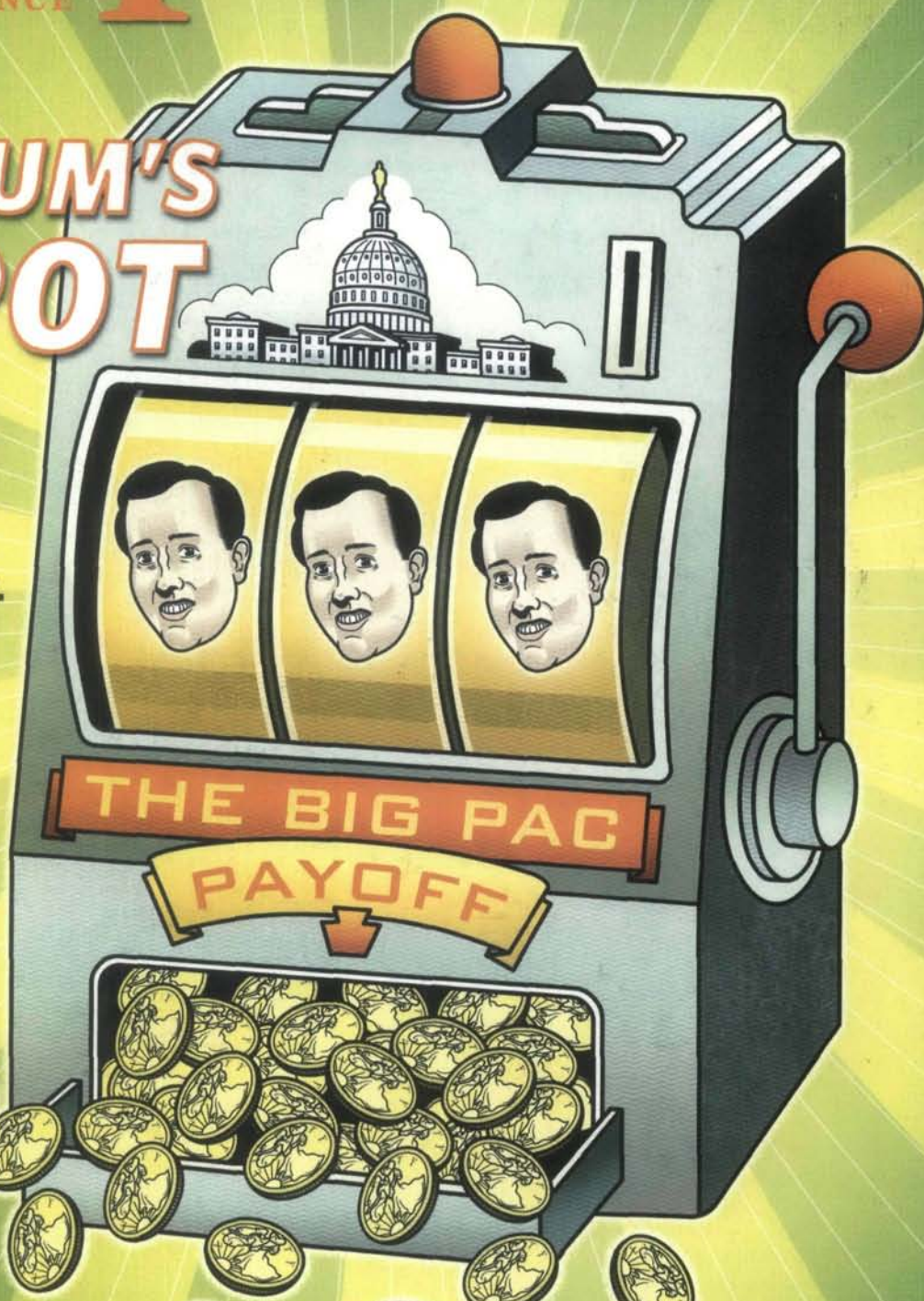
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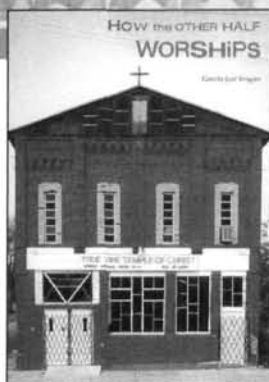


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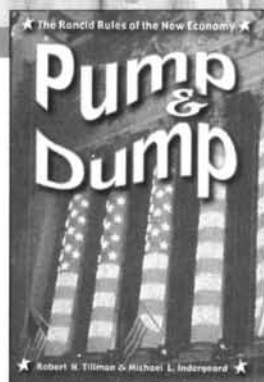


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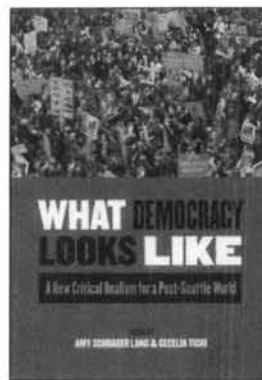
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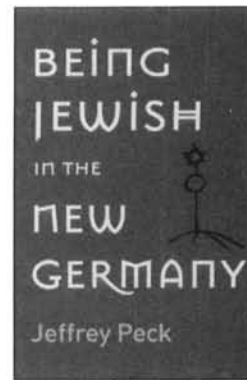
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THE AMERICAN Prospect

LIBERAL INTELLIGENCE

*"The Senate is the last primitive
society in the world."*

— EUGENE MCCARTHY

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- 28 **With a Little Help from His Friends** *by Will Bunch*
Pennsylvania's Rick Santorum was recently named the Senate GOP's ethics point man. An investigation into his campaign expenses and his, ah, interesting mortgage, show that he is indeed an expert on Senate rules—and how to bend them.



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Think the unthinkable: It's 2009 and our government is decapitated in a terrorist attack. How do we build a new one? Under existing law, not very well. There's a better way to prepare for a day we hope will never come.

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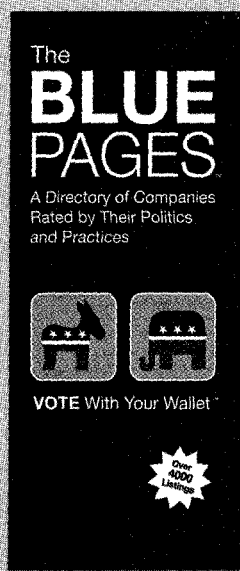
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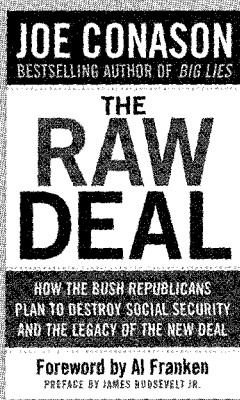
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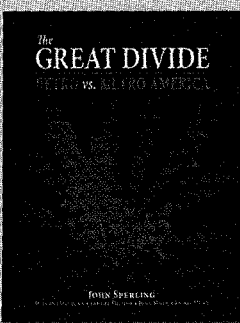
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Bush vs. Constitution

REPEATEDLY THROUGH OUR HISTORY, THE LIBERTIES guaranteed by the Constitution have been threatened in war by an overreacting government and then reaffirmed in peace by calmer leadership. The Alien and Sedition Acts of 1798, Lincoln's suspension of *habeas*

corpus, the suppression of free speech during and after World War I, the internment of Japanese Americans during World War II, McCarthyism, and the wiretapping of Vietnam-era dissenters—all of these came to be seen, once fears subsided, as violations of our freedoms and embarrassments to our heritage.

George W. Bush's presidency is another era of overreaction at the expense of constitutional rights, but the prospects for a quick correction are not auspicious. Nothing has helped end earlier bouts of repression so much as the fact that the wars themselves came to a close, and nothing has so exposed our liberties to indefinite jeopardy as the conception of a "war on terrorism" with no end.

The president claims an inherent power to imprison American citizens whom he has determined to be this country's enemies without obtaining a warrant, letting them hear the charges against them, or following other safeguards against wrongful punishment guaranteed by the Bill of Rights. Under his administration, the government has engaged in inhumane treatment of prisoners that amounts to torture, and when Congress passed legislation to ban such treatment, he declared he would simply interpret the law his own way. Although the Constitution says treaties are the "supreme law of the land," the president has abrogated them on his own. And, we now know, he ordered a secret program of electronic surveillance of Americans without court warrants.

But there is something more dangerous than any of these specific abuses and usurpations, and that is the *theory* of inherent powers that Bush invokes to justify most of these actions and the possibility of its being effectively institutionalized by a meek Congress and, worst of all, by a deferential Supreme Court.

My concern is analogous to the one that Justice Robert H. Jackson articulated when he dissented from the majority in *Korematsu*, the infamous Supreme Court decision in the midst of war (1944) upholding the constitutionality of the military order to intern Japanese Americans. A judicial construction sustaining the program, he wrote, "is a far more subtle blow to liberty than the promulgation of the order itself." For by rationalizing the order, "the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

The real danger today is the loaded weapon that Bush and his defenders are willing to put in the hands of all future presidents. Even members of his own party ought to be able to see that danger,

and act to stop it.

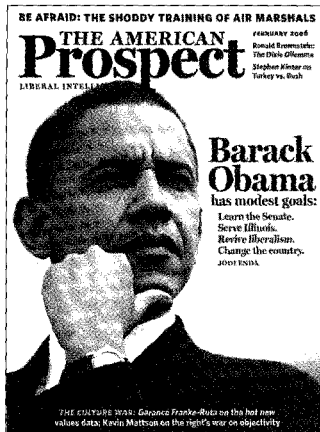
Americans have been slow to react to Bush's actions because the great majority of them no more identify with the Arabs who are the chief targets of the "war on terrorism" than the majority in the 1940s identified with their fellow citizens of Japanese descent. But the principles that Bush is undermining protect us all. Our Constitution divides the president's authority with Congress and the courts so as to create a system of mandatory consultations. That requirement does not make injustice and misuse of power impossible, but it makes them less likely. To survive, the system chiefly requires that if those in power cannot remember our traditions, they can at least imagine themselves out of power in the future.

Not long ago, the Supreme Court could have been counted on to restore the checks that Bush has thrust aside. But the confirmation of the president's two nominees to the Court may now tilt it in his direction. The common element in the background of the new justices is not merely their political conservatism, but their history of support for a broad construction of executive powers.

***President Bush's
conception of
his own powers
is even more
dangerous than
his specific abuses.***

The combined effect of a changed court and a putative state of perpetual war could radically distort our whole constitutional framework. An increasing number of congressional Republicans have recently expressed doubts about the legality of Bush's surveillance program. The real battle, however, is about general principles applied across a wide range of policies. Of course, if the voters elect a Democratic president in 2008, perhaps even the Court's new justices may discover constitutional reasons to limit the president's inherent powers. I am not saying this is the only hope. But in a democracy, those who cannot imagine being out of power deserve another experience of being without it. **TAP**

— PAUL STARR



*There is no way
the DNC would
send me a mailing
without your
subscription list.*

— WILLIAM LEVINGER
KENNEWICK, WA

The Vision Thing

MY THANKS TO GARANCE Franke-Ruta for the most thoughtful version I've yet seen of the argument for a "values" turn in the politics of the Democratic Party ("Remapping the Culture Debate," February 2006).

While I was far more sympathetic to her approach than to that of many "centrists" repeating the same mantra, I was troubled by its overly hasty conclusions about economic matters. Her description of the American Environics analysis of changes in America since 1992, indicating a cultural turn toward an "atomized, rage-filled outlook that values consumption, sexual permissiveness, and xenophobia" certainly rings true, and Franke-Ruta is surely right to indicate that such an underlying shift is every bit as far from "authority"-based conservatism as it is from "fulfillment"-based progressivism.

However, to explain why Republicans have benefited from the drift in American culture she takes the data in a questionable direction, joining the Democratic centrists in asserting that economics just doesn't matter as much as it used to. This part of the argument both ignores basic

trends in recent years (increased poverty and job insecurity, downward mobility on the part of the white middle-class, etc.) and fails to consider alternative explanations.

If one is to admit that families earning \$30,000-\$60,000 (the real American "middle") are actually not doing very well by world standards, one might look to the very research that so fascinates Franke-Ruta to suggest why they, nonetheless, vote increasingly based upon "hot-button" cultural issues. Indeed, to her credit, Franke-Ruta also notes this explanation in passing: The conservative/traditionalist vision offers an alternative (albeit a false one) to the increasing anarchy of the social/economic world they inhabit—a dream of moral and social certainty. In other words, our cycle is a familiar one to historians of fascism—where increasing economic desperation calls forth corresponding anger, which is then channeled by the right into a politics of resentment and escape ("Save me from myself!").

If one understands the situation in this way, then the "values" argument points in a different direction than the Warner/Casey/Kaine axis would suggest. No

doubt, the technocratic and traditional liberalism of a John Kerry did fail to attract the new middle class. But the alternative is not (or should not be) so much centrist or culturally conservative as it is visionary. What is needed are progressive values, ideas corresponding to the egalitarian and "fulfillment" side of the Shellenberger and Nordaus' schema. John Edwards' "war on poverty" strikes me as one of these, as does Al Gore's global "green" movement. In other words, perhaps economic pain and uncertainty is the underlying reason for the changes in culture documented by the Environics group.

DR. THOMAS BROCKELMAN
Syracuse, NY

Garance Franke-Ruta

responds: Dr. Brockelman is right to note that some of the new cultural tendencies are undergirded by economic shifts, such the absence of unions or government programs that touch the middle class, as well as the lessened job security and rising income variability in today's high-risk economy—something I tried to make clear in my article. Nor ought we forget the way large corporations have perverted pop culture for market reasons, selling to the public a facsimile of liberalism that bears no relationship to actual progressive values.

Brockelman is also onto something when he suggests that a more visionary approach on the part of Democrats might be even more successful than a turn to explicit values talk. I'd like to believe this, too. However, there is as yet no evidence to

support this idea, John Edwards' soaring rhetoric notwithstanding. A war on poverty, however admirable and needed, will more readily appeal to goodhearted liberals and to the poor than to those members of the middle-class who've turned the fact of government abandonment and economic isolation into an ethos of resentful self-reliance. Further, the best post-election post-mortem about the shift in support on the part of Hispanic voters—who, in general, have higher poverty rates and lower incomes than the whites of whom we've been speaking—shows that they, too, were wooed by arguments other than economic ones in 2004. I rather suspect that an economic agenda made up of optimistic appeals to that self-reliance and the creation of widely available but not too ambitious federal programs to insure against risk might be considered more appealing to such voters than Great Society-style collective action programs targeted toward discreet populations.

We're Thinking ...

HERE AT GLOBAL TRADE Watch, we value *The American Prospect* as a forum for progressives to think beyond the conventional Beltway wisdom that has given us the flawed globalization and trade model represented by WTO, NAFTA, and CAFTA. So we were surprised to see an item in the February issue's Up Front section that appeared to buy in to a knee-jerk, non-fact-based Washington "consensus" on Venezuela, a country that has become a global leader against the corporate-trade model and

has been at the forefront of seeking and implementing people-centered alternatives to it—an agenda that is shared with the *Prospect* and many of its readers.

Snidely calling Venezuela's thrice-elected, global justice-minded leader snarky names struck us as an urgent call for a *Prospect*-hosted written "forum" on democracy in, and U.S. policy toward, Venezuela. We'll supply a high-quality, factually impeccable review by a qualified expert that we would consider "pro-democracy," and you can provide anyone of your pick to justify why U.S. progressives kinda-sorta-maybe-shoulda distance themselves from the only democratically elected government in the world that is actually implementing the

things we only write about here in the United States. You've got our number—please give us a ring.

LORI WALLACH
Director
Public Citizen's Global Trade Watch

Yikes!

RECENTLY I WAS GIVEN a subscription to *The American Prospect*. Two days ago I was sent a mailing from the Democratic National Committee. Accident? I think not.

There is simply no way that the DNC would have known to send me a mailing without a copy of your subscription list. I find this offensive. In fact, I find it as intrusive as the FBI being able to investigate my library

selections. SHAME!

I have been registered to vote at my current address for a year. I am an independent. My state does not require party affiliation on registration.

Please print this letter and an apology. In the future ask subscribers if you may share their information. Meanwhile, please remove my name from your subscription list and send me a refund.

WILLIAM LEVINGER
Kennewick, WA

Michael Tomasky replies:

Letter printed. As for the apology ... We thought most people knew that it's commonplace for magazines to trade lists with likeminded groups. This practice allows organizations to grow and consumers to be educated on the wealth of other infor-

mation they might find appealing. It is so common a practice that we rarely get complaints. But if it troubles you too, call 1-888-MUSTREAD and tell them not to share your name.

Correction: In the February issue, Kevin Mattson's article, "The Book of Liberal Virtues," said that Michel Foucault participated in the Paris student revolt in May 1968. The event at which Foucault was present actually took place on the campus of the university in Vincennes in January 1969.

Letters to the editors should be sent to letters@prospect.org or mailed to The Editors, The American Prospect, 2000 L St., NW, Suite 717, Washington, D.C. 20036.

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Up Front



CASEY STRIKES OUT

LIBERALS WEREN'T ENTHUSIASTIC WHEN THE POWERS that be in Pennsylvania Democratic circles began pushing heavily for Treasurer Bob Casey Jr. to be the party's nominee to run against Rick Santorum.

That Casey is pro-life is one thing. More troubling was the news that Casey opposes embryonic stem-cell research. But then, Casey said in late January that he favored the confirmation of Samuel Alito as Supreme Court justice.

It's time to re-think the premise that *Pennsylvania* is really the place where the Democrats need to start running social conservatives for office. Despite the Keystone State's famous reputation as "Philadelphia and Pittsburgh with Alabama in between," the past four presidential elections have seen Pennsylvania go for pro-choice Democrats over pro-life Republicans. In the 2002 gubernatorial election, pro-choice Democrat Ed Rendell prevailed easily over a pro-life Republican. Rendell's elected predecessor was a pro-choice Republican, as is Santorum's fellow senator, Arlen Specter. The last time Democrats tried nominating a pro-lifer to run against a pro-life Republican, he lost—to none other than Santorum himself.

Under the circumstances, further shifts to the right seem hard to justify tactically and raise the possibility—at once reassuring and troubling—that what most Democrats saw as a tactical gambit is, to Casey, a matter of conviction.

— MATTHEW YGLESIAS

PROBLEM; SOLUTION

The White House is increasingly concerned about Republicans breaking ranks—Arlen Specter and John Sununu in the Senate, New Mexico's Heather Wilson in the House, and various bureaucrats. Karl Rove, naturally, is a bit miffed at these people. But we hear he has come up with a way to ensure that they get more face time with the administration in an attempt to get them back on the reservation: They'll get to go on hunting trips with Dick Cheney.

REMEMBER THIS

It wasn't interesting that Virginia Senator George Allen won the 2008 presidential straw poll at the February Conservative Political Action Committee (CPAC) meeting with 22 percent of the vote. What was interesting was who came in second, and by how much: John McCain got 20 percent of the votes, trailing Allen by just two points. Allen is a longtime wing-nut poster boy. McCain, of course, is a historic bane to the movement. But things do change. While it's worth noting that this hardened assemblage may not have been a representative sample—81 percent of the 1,200 respondents were 25 or younger, and 58 percent were male—it's still a sign that McCain's vigorous suck-up campaign is working. We're sure that the timing of his scabrous attack on Barack

Obama, in which he wrote the Illinois Democrat a mocking letter, and which took place just days before the CPAC event, was just a coincidence.



A MAN, A PLAN ...

Oregon Senator **Ron Wyden** stopped by the office in February to tout his very sensible-seeming tax-reform plan, which would tax wealth at the same rate as wages. But he also told us the following interesting story. He watched the first debate between John Kerry and George W. Bush, he said, and was distressed to hear the leaden language with which Kerry tried to sell his health-care plan—a plan we always thought was quite good. Wyden says he suggested to his colleague that he not describe the plan's particulars, but dramatize it by talking about how it would benefit a hardware store owner with five employees. Kerry, he says, thanked him and agreed. Wyden continued: "So I turned on the [next] debate," Wyden said, "and it was nothing but 'my plan this, my plan that.'" OK, everyone's a good quarterback on Monday morning, and Wyden may not be presidential timbre. But the anecdote does help explain some things.

THE QUESTION: SHOULD BUSH SEE *BROKEBACK MOUNTAIN* OR *GOOD NIGHT, AND GOOD LUCK*?

"Duh. *Brokeback*. It shows the reality of gay love. It may help him understand why his refusal to acknowledge even the existence of gays and lesbians in his public speeches is such an affront." — **Andrew Sullivan**, writer/blogger



"*Good Night, and Good Luck*. Men smoking and drinking and still doing God's work might just make him thirsty and uneasy. And I bet he'd be more attracted to Clooney than Ledger." — **Rafael Yglesias**, screenwriter, *Dark Water*



"*Good Night, and Good Luck*. Given the NSA scandal and the Plame affair, the words of Edward R. Murrow would be important for him to hear." — **Anna Soellner**, director of Outreach and Special Events, Center for American Progress



RED INK PLANET

What happened to Mars? Out rolled the question off one wit's tongue during the buildup to the 2006 State of the Union Address. Somewhat surprisingly, the mission to Mars, which was famously announced prior to the 2004 *SOTU* but omitted from the speech itself, is actually right on track. The Bush administration's fiscal year 2007 budget request commits us to "having astronauts return to the moon by the end of the next decade followed by future human missions to Mars and beyond." As it did in last year's budget, this commitment comes at the expense of major cuts in other programs. Such non-priorities include the budget categories labeled "science," "aeronautics," and "education"—that is, the actually useful elements of the NASA budget. So how did a program greeted with immediate derision from all quarters wind up eating the rest of America's space budget? As a *Florida Today* article explained back in 2004, program advocates were helped by a "quiet, but effective lobbying effort by the aerospace contractors who stand to profit [by] the projects."

LESSONS FROM ABROAD

Congressional Democrats hoping to use the corruption issue in 2006 took some heart from the Canadian Conservative Party's January victory over the long-time in-

cumbent Liberals, a win driven largely by revelations of financial misdeeds by the entrenched majority. Still, lingering voter doubts about the Conservatives' merits prevented them from securing an absolute majority. On the other hand, the terrorist organization Hamas scored a tremendous upset win against the Fatah movement by combining a "clean hands" platform with support for traditional religious values, a tough posture on national security, and robust economic populism. Scoop Jackson would be proud.

TOUCHY, TOUCHY



Prospect readers might recall the fumingly irate letter to the editor that Congressman Brian Baird of Washington sent a few months back in response to Robert Kuttner and Asheesh Siddique's feature story on sell-out Democrats. That piece, Baird wrote, "epitomizes much of why the left loses elections and has stayed in the minority for more than a decade now." We're far from alone in suffering the wrath of Baird's mighty pen. *Roll Call* recently noted a minor kerfuffle in Washington state political circles concerning an exchange of letters between Baird and Centralia College student Brian Nelson, who had received Baird's scholarship award and sent a typed

letter of thanks to the congressman. Baird sent a helpful letter in return to the kid, pointing out that his note was "quite frankly, not very impressive to say the least." He continued: "Perhaps you have not been given instruction in how to write formal letters, but let us suggest that you learn ... When someone contributes rather generously and selflessly to your benefit, you owe them a sincere and heartfelt expression of gratitude." Said gratitude ought to be expressed on a "nice card" or letterhead, Baird added helpfully, and handwritten. Even more helpfully, he cc'ed his note to the Centralia College Scholarship Office.

PROGRESS

Good news for Ohio Republican Governor Bob Taft! A recent poll put his approval rating at 16 percent. That may sound low, but it's more than double the 6.5 percent he registered in a Toledo *Blade* survey last November, just a few months after he was convicted of accepting a golf outing, hockey tickets, and a few other baubles. Perhaps it's that Taft doesn't look so bad next to Tom Noe, the coin dealer and prominent GOP Buckeye State fundraiser, who was indicted on 53 felony counts relating to the "coingate" scam in which he allegedly stole as much as \$3 million from a state fund for injured workers. In addition, Noe faces federal

charges of illegally funneling \$45,400 to the Bush-Cheney reelection campaign, and two Taft aides face ethics probes. Taft's grandfather, the right-wing (but honest, as far as we know) senator, was known as "Mr. Republican" for the way he represented the party's principles. Given the way things are going in Columbus and on Capitol Hill, the present Taft should be called Mr. Republican, too, as he's representing the current state of GOP ethics just about perfectly.

HARRY AND HOWARD

We had a breakfast discussion with Harry Reid not long ago. He made some news when he came out for "some type of public [campaign] financing," which is something he hadn't said before. But the discussion of his history with campaign finance



took us down an unexpected path: "When I first ran for statewide office in Nevada, Howard Hughes was in town and I got a call from his 'person'—'can you come see me?' And oh, I was happy. And he gave me \$10,000 in cash. Now, I didn't know what I was going to do with it. I mean, where do you put it? It's big wads of money." He hastened to add that it was perfectly legal in Nevada at the time, but he didn't say how long Hughes' fingernails were. **TAP**

The Limits of Limits

BY MARK SCHMITT

OUR LONG NATIONAL NIGHTMARE HAS JUST BEGUN. There is now little doubt that the next three years will bring one revelation after another about the magnitude of congressional corruption. Democrats will relish this prospect, and “reform” will be an inevitable

theme of the next two election cycles. But some political scandals lead to change, while others dominate the headlines for a year and leave no trace. Why? Some of it has to do with managing the media, but it also involves offering credible solutions. Scandals without solutions simply stoke public cynicism. And it is in just such cynical soil that the seed of corrupt big-government “conservatism” was planted.

The challenge, then, is to define the solution. The first bid, from some Republicans and from overly literal Democrats, will be “lobbying reform.” Keeping lobbyists at arm’s length should be a matter of personal responsibility on the part of elected officials, reinforced by clear rules. But the idea that the large-scale wrongdoing we’ve witnessed recently could have been prevented by banning lobbyists from paying for lunch or trips is laughable.

The problem isn’t who pays for lunch. It’s who pays for politics. Elected officials with enough integrity can skip the meals and trips. But none of them can avoid the lobbyists who control, directly or indirectly, much of the money that pays for elections.

The more far-reaching proposals for reform acknowledge this fact and call for limits on contributions from lobbyists, limits on fund-raisers hosted by lobbyists, and limits on independent political committees. Some of these provisions are wise, some unconstitutional, others easily evaded. And what they have in common is: They are all based on *limits*.

But limits have reached their own lim-

its. Almost four years after passage of the McCain-Feingold law, its modest limits on soft money and certain issue ads are still contested, or, in the case of political use of the Internet, seem to have spun down a regulatory rabbit hole. Unless the Supreme Court this year decides to uphold a Vermont law imposing mandatory limits on spending—which would be a surprise—limits on contributions will coexist with unlimited spending, which inevitably creates further pressure and incentive to find ways around the existing limits. As long as we have a Constitution and capitalism, there will be ways.

Limits address only one side of the relationship between political money and corruption. There’s another dimension where there isn’t *enough* money in politics. And that’s where the connection to the current scandals is strongest and where real solutions are possible.

LET’S WALK THIS SCANDAL BACK: AS George W. Bush says, there is only one “accountability moment” for an elected official—Election Day. And for almost all the members of Congress involved in these scandals, that moment passed no differently from any other November Tuesday. Ohio Representative Bob Ney, “Represen-

tative #1” in the Jack Abramoff indictment, won his last reelection outspending his opponent \$1.4 million to \$18,000. John Doolittle of California, another who intervened on behalf of Abramoff clients, spent less than Ney; but his last two opponents *combined* had only \$10,000.

It’s on the second number rather than the first that reform must focus. Imagine if Ney’s opponent had \$500,000—enough to hire a research staff and buy some radio ads raising questions about, for example, the odd statements that Ney introduced into the *Congressional Record* in support of Abramoff’s casino-boat franchise. Is it possible that might have wiped a little of the smirk off Ney’s face?

The next generation of campaign finance laws has to involve not more limits, but expansive reform that strengthens the voice of challengers and enhances the power of small donors. None of this is fantasy; public-financing systems in Arizona, Maine, New York City, Minnesota, and now Connecticut, though varying greatly in their details, all make it easier to run and be heard.

These systems don’t overreach; they don’t try to ban all private money, close every loophole, make every election perfectly competitive, or force a constitutional showdown. They aren’t rigged to change the partisan balance, either. But all these systems do allow candidates with a broad base of public support from small donors, but without great personal wealth or big-dollar backers, to be heard.

It’s easy to waver between total cynicism and overambitious optimism on this issue. Yes, there will always be corrupting influences. But these next-generation reforms might, among other benefits, remind elected officials that they can no longer operate in a zone of silence, confident that their actions will go unchallenged. And that just might force those with power to think twice before abusing it as they did in the current mega-scandal. **TAP**

*Instead of limiting
incumbents’
dollars, why not
increase the
amounts available
to challengers?*

Beyond Repair

BY MELISSA HARRIS LACEWELL

I AM STRUGGLING WITH A MORAL AND INTELLECTUAL dilemma. I am a progressive, African American academic committed to battling racial inequality and I do not want my public voice deployed against struggling communities. So I have been reluctant to admit that I

am ambivalent about racialized demands to rebuild New Orleans. Displaced black citizens are insisting on return—they want their city rebuilt as it was before Katrina—because they reasonably fear the loss of all they have invested. But simultaneous and complete urban reconstruction is impossible. I finally choose to speak because I fear that if we focus exclusively on rebuilding we will miss an opportunity to demand another and arguably more just option: restoration.

I want New Orleans back. I am not a native of the city, but I am grieving the enormity of its loss. We witnessed the devastation of one of the most artistically innovative, linguistically complicated, and culturally rich black communities on earth. Black people built the city's culture, staffed its hotels, harvested its resources, and developed its neighborhoods. But the investment they made was never reciprocated. Local and national governments allowed black citizens to live in segregated, vulnerable communities. When decades of government neglect and incompetence led to the catastrophic levee breaches this summer, the government allowed black people to starve in American streets while the world watched on television.

I went to New Orleans in November and talked with dozens of survivors as they demanded justice. They were trying to carve out a new life in the devastated city because, even in ruins, New Orleans felt like home. But many also recognized that the city for which they sighed was irretriev-

ably lost. When they told me they wanted to go home, they were really saying that they wished this had never happened.

Our country's history is littered with the black bodies of citizens victimized by institutional racism and broken promises that went by the names "states rights," "Southern custom," "separate but equal," "selective sterilization," "meritocracy," "urban redevelopment," "war on drugs," and "welfare to work." National surveys show that Katrina tapped into this history and fueled deep racial distrust. In September I conducted a national survey with two colleagues. We found that more than 80 percent of black Americans believe the federal government's response would have been faster if most victims had been white; by contrast, only 20 percent of whites believe that. And nearly 90 percent of African Americans believe the disaster revealed continuing racial inequality, while only 38 percent of whites agree. A wide perceptual gulf separates black and white Americans on each of these issues and leaves many African Americans feeling that there is no safe place for them in America.

I believe these respondents are correct: There is no justice in the simple right to return because the waters will rise again. Future hurricanes may increase in frequency and intensity. The natural bar-

riers against the storms are eroding annually. The political barriers against destruction eroded long ago. There is no national will to provide adequate protection. Just a third of white Americans believe that we should spend whatever is necessary to rebuild the New Orleans. There will be no category-five levees.

But there is another route to more certain, if less complete, justice. The citizens of New Orleans can be restored. What would restoration look like? The federal government would pay homeowners the pre-Katrina, fair-market value of their homes and land. The federal government would provide educational grants and living assistance for two full years to all Katrina survivors. The federal government would underwrite the full cost of physical and mental health care for all survivors for two full years. Rather than haphazard redevelopment of the eastern parts of New Orleans, the city should designate substantial portions of remaining, safer neighborhoods for low-income housing. All Katrina survivors would be immediately re-enfranchised and given the choice of registering as New Orleans voters for the next two years or of registering in their new communities.

Americans are suffering because their government failed to protect them from

Katrina. They deserve to be restored. Black people have sustained the loss of our motherland, our names, our histories, our languages, our freedom, and our children. In the midst of our losses we have always taken fragments of our

homes with us into terrifying, forced Diasporas and with these fragments we enriched every land we touched. We made new communities. We must do it again, but this time we should be compensated for the losses we suffered. **TAP**



Melissa Harris Lacewell is assistant professor of political science at the University of Chicago and author of Barbershops, Bibles, and BET: Everyday Talk and Black Political Thought.

Suffering from Chronic Pain? For Solutions, Read On...

**Up to 30 million Americans suffer from under-treated chronic pain.¹
Families suffer with them. For most, suffering is completely unnecessary.**

Problem: Medical schools often give pain treatment low priority and discourage students from a pain specialty.

Solution: Encourage medical schools to prioritize teaching pain management per "best practice" as recommended by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)² and also provide educational workshops for physicians already in practice.

Problem: Even when properly informed, doctors are often afraid to follow "best practice" guidelines for patients who require large amounts of medication or even to accept pain patients out of fear of being prosecuted by the Drug Enforcement Administration (DEA).

Solution: Seek another doctor if your prescription fails to relieve your pain. If you are unable to obtain adequate medication, complain to your senators and congressman and urge them to investigate the DEA's failure to respect "best practice" and prosecution of conscientious physicians. (Conscientious physicians tend to attract serious chronic pain sufferers, and hence prescribe greater quantities of opioids in general and huge doses to some patients as necessary. Thus they attract the scrutiny and animosity of overzealous DEA agents and prosecutors who either don't understand "best practice" or are seeking headlines to divert attention from the DEA's overall failure to prevent widescale criminal diversion of licit and illicit drugs.)

Problem: Many patients suffer needlessly because they either are too stoic to complain or they mistakenly fear addiction.

Solution: Educate patients about the importance of reporting unrelieved pain, and make them aware that opioid treatment is rarely addictive.

Problem: Loved ones often underestimate the debilitating effects of chronic pain and discourage taking dosages as prescribed.

Solution: Involve family members in pain treatment consultations. Make them aware that their loved one's pain affects the entire family and can be successfully treated medically.

You are entitled to "Best Practice" treatment. Demand it!

Common Sense for Drug Policy

H. Michael Gray, Chair – Robert E. Field, Co-Chair

www.CommonSenseDrugPolicy.org -- www.DrugWarFacts.org

www.ManagingChronicPain.org -- www.MedicalMJ.org

info@cscp.org

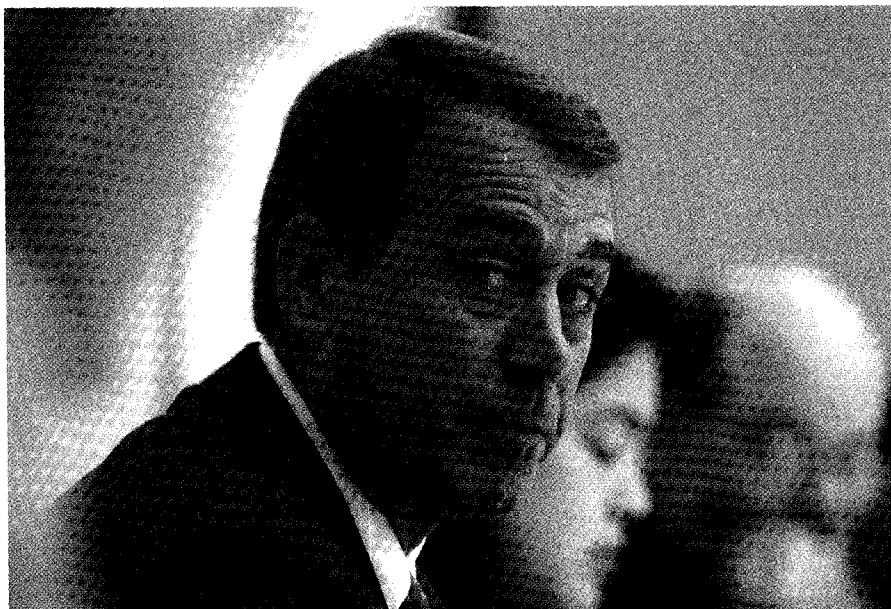
1) "Pain Facts: An Overview of American Pain Surveys," American Pain Foundation, from the web at <http://www.painfoundation.org/print.asp?file=Library/PainSurveys.htm>, last accessed Nov. 22, 2005.

2) Joint Commission on Accreditation of Healthcare Organizations on Pain Management, from the web at <http://www.jcaho.org/news+room/health+care+issues/jcaho+focuses+on+pain+management.htm>, Nov. 22, 2005.

Dispatches

"Those Democrats prepared to engage with the issue seem determined to get to the right of the Bush administration on Iran."

— PAGE 21



Would You Buy a Used House Gym from This Man?: John Boehner

THE REPUBLICANS

MEET THE NEW BOSS

Earmarks, schmearmarks: John Boehner begins an era of faux reform.

BY SAM ROSENFELD

WHAT, IS KATHERINE HARRIS counting the ballots in there?" Several journalists shot out the same joke after flak emerged from the closed-door House Republican conference meeting, which was held to announce that more ballots than actual voters had been tallied in the February 2 election for majority leader. The snafu resonated uncomfortably in the air of corruption and disarray that had initially set the context for this heated race to replace disgraced party leader Tom DeLay. So Republicans were relieved when they discovered that the counting disparity stemmed from an innocent clerical error and would not, in fact, produce a Florida-style donnybrook.

A run-off ballot was in order, however,

and when word of the final tally leaked to the journalists and staffers shuffling distractedly outside the caucus room in the Cannon Office Building, the shock was palpable. By a vote of 122-109 on the second ballot, establishment favorite and DeLay protégé Roy Blunt of Missouri was bested by John Boehner (BAY-ner) of Ohio.

Many members, as several confirmed in chats after the vote, shared that sense of shock. "It was a highly dynamic environment in there," said Mark Kirk of Illinois. "It was tense." Many credited Boehner's victory to John Shadegg's insurgent candidacy, which conservative outlets and advocates across the country had championed as the key to redemption and spiritual restoration. "If Shadegg

hadn't run, Blunt would have won on the first ballot," insisted Shadegg ally Jeff Flake of Arizona. "Shadegg put the focus on reform and change." Said Colorado's Joel Hefley, the former chairman of the ethics committee who twice admonished "The Hammer" in 2004 before being purged from the panel as punishment: "This vote signaled an attempt to get away from DeLay and his image. He was dragging the party down." Others were less blunt, but sounded the same note. "This is a new beginning!" cried Ohio's David Hobson. "I'm hopeful it bodes well for us in November."

LET IT BE SAID THAT IF JOHN BOEHNER's ascension does forestall GOP electoral losses, it will only illustrate to Democrats the costs of having personalized the systemic corruption of modern Republican governance in the outsized figures of DeLay and Jack Abramoff. For Boehner's career embodies the core elements of modern Republicanism—pay-to-play machine politics and government by lobbyist—every bit as well as DeLay's or Blunt's does. What's more, the reforms Boehner looks to be championing in the coming months—mostly centered around the sudden new conservative bogeyman of congressional "earmarking"—are not merely cosmetic, but fundamentally fraudulent.

Boehner's election capped a slow, methodical journey back to a leadership position following his ouster in 1998, and his candidacy was billed to the conference as a homecoming. His campaign heavily played up his role in the original 1994 Republican takeover, which the party has come to view as an Edenic era of principle and idealism before the fall into corruption and big-government Republicanism that DeLay supposedly ushered in. Needless to say, Boehner's actual role in the 1994 revolution belies such revisionism.

The former owner of a plastics com-

pany in western Ohio was first elected to Congress in 1990. As the Republican Conference chair following the 1994 takeover, Boehner was central to initiating the marriage between K Street and the GOP congressional majority that is now commonly associated with DeLay. He served as the new majority's main liaison to business, conceiving of and hosting the Thursday Group, a weekly strategy meeting with business lobbyists and trade associations—the GOP's "closest friends," as Boehner put it in an interview with journalist Elizabeth Drew at the time. The now-notorious 1995 incident in which he handed out checks from tobacco lobbyists to colleagues on the House floor only underscores the point: The systems and practices that might now be thought of

the nation's largest, Sallie Mae—are top contributors to Boehner, and the chairman serves up legislation consistently favorable to their interests. But the congressman's power also stems from the cultivation of a network of K Street allies and pioneering innovations in methods of influence-peddling that can both fairly be described as DeLayesque.

Boehner's lobbyist supporters include an array of former staffers, including Marc Lampkin of Quinn Gillespie, as well as allies from his Thursday Group days, such as Dirk Van Dongen of the National Association of Wholesaler-Distributors and Henry Gandy of The Duberstein Group. Bruce Gates, a lobbyist at Washington Council Ernst & Young (WCEY) and a longtime Boehner supporter, also

serious lobbying and ethics reforms. He hasn't bothered much to conceal his skepticism about the need to address the Abramoff scandals by putting forth a slew of new lobbying regulations. Boehner's stated coolness to fellow party leaders' cosmetic proposals to ban gifts and travel and to prohibit ex-members from using the House gym reflects the will of his conference. As Common Cause spokeswoman Mary Boyle explains: "It's clear there was some quick, serious push-back by Republicans at some of what we would consider the simplest and easiest-to-do reforms."

If there's little GOP enthusiasm for ethics reforms, however, there is serious momentum behind a different kind of crackdown that has, over the past few months, emerged as a galvanizing conservative rallying cry and a seeming panacea for all that ails the modern Republican Party: earmark reform.

Earmarks are more commonly known as pork—funds specifically designated for a named project at the request of that locality's representative—and there's no denying that the practice of earmarking has metastasized under GOP rule. Commentators from George Will to David Brooks to editors at *National Review* have argued that earmarking lies at the heart of both the corruption scandals currently sully the party's image and its betrayal of small-government principle.

It so happens that Boehner's one concession to that principle is a long-standing opposition to earmarking; he has refused to engage in the practice his entire career. That's noble. But as a response to the "culture of corruption" charges currently embroiling the party, earmark reform is a non sequitur. Appropriations pork is a classic mainstay of American politics, but precisely because earmarks are *popular*, they don't typically depend on bribery. Earmarking simply isn't a central feature of either the modern GOP's brand of machine politics or the Abramoff scandals. As Common Cause's Boyle puts it, "We definitely see earmark reform as a second-tier reform. Sure, we would support it, but it really doesn't get at the heart of the issues here."

Earmarks have nothing to do with the

The 2004 Boehner party at the Republican convention boasted 68 corporate sponsors, including Coca-Cola, Eli Lilly—and Sallie Mae.

collectively as "DeLayism" were central to the founding era of the modern Republican Congress, and Boehner was one of their most energetic exponents.

Boehner fell from the leadership at the same time Gingrich did, in 1998, but almost instantly began long-range preparations for a comeback. From his perch as chairman of the House Committee on Education and the Workforce, he built his power base out of the same materials as that of his rival DeLay's: money—vast sums of it—and an extensive K Street machine. Boehner's huge fund-raising apparatus has garnered his leadership political action committee, the Freedom Project, cash amounts that well exceed typical levels for chairmen of committees (such as Education and Workforce) not considered top-tier in the eyes of corporate lobbyists. His PAC has dispensed about \$3 million to fellow Republicans since 1998—\$150,000 to 30 lawmakers in December 2005 alone, just as the leadership race began heating up.

Boehner's war chest in part rests on the kind of classic special-interest relationships common to committee chairs. Student-loan providers—particularly

serves as the Freedom Project's treasurer. (Individuals and political funds associated with WCEY's parent company Ernst & Young in turn contributed more than \$83,000 to the PAC, according to the Center for Responsive Politics.)

Gates and Gandy, meanwhile, became famous for devising a high-priced soiree and hob-knobbing session on Boehner's behalf at the 1996 Republican National Convention in San Diego, renting out a warehouse and organizing a multi-night extravaganza sponsored by corporations, lobbyists, and interest groups. The two repeated their efforts at the 2000 and 2004 GOP conventions, and the shindigs acquired the moniker of "Boehner parties." The 2004 Boehner party in New York boasted 68 corporate sponsors, including Coca-Cola, Eli Lilly—and Sallie Mae. In this as in so many other areas, John Boehner was a true pioneer, and he's utilized similar approaches to cultivate private funding for lavish annual parties and golf trips.

IT PROBABLY SHOULDN'T COME AS A shock to see a politician with Boehner's history blanch at the prospect of

K Street Project, or the revolving door between Hill staffers and lobbying shops that sustain DeLayism, or the holistic merging of the corporate lobby and the Republican Party that is the central story of the modern Congress. Earmarks also have nothing to do with the standard combination of industry giveaways and policy illiteracy underlying legislative monstrosities like the Medicare prescription-drug plan. And as a response to the modern GOP's abandonment of small-government principles, earmark reform is even more of a red herring. The grand total of *all* appropriations earmarks last year amounted to a little more than 1 percent of the total federal budget.

To make a real dent in the size of gov-

ernment would require serious and sustained cuts in entitlement spending that would prove politically suicidal for the GOP. And to address the party's culture of corruption in a serious way would dry the money stream that undergirds Republican coordination and discipline and sustains Republican rule.

Conservatives may wish to delude themselves into believing that the GOP's current shortcomings are largely the product of Tom DeLay's personal unscrupulousness and ideological betrayals, and that redemption is imminent. But they aren't likely to find sustenance for such delusions in the leadership of John Boehner. Once again, the GOP has a majority leader it deserves. **TAP**

of Montana, backed Bush's plan. Baucus wants to reduce the profusion of private plans, but not reverse the whole approach. At an oversight hearing February 8, Baucus criticized two aspects of the program's implementation—the excess number of drug plans and the implementation of the Medicare-Medicaid transition, but declared that: “I supported enactment of the Medicare drug benefit in 2003. I still support it.”

The position is of a piece with Baucus' record on the question. When Republicans went to conference committee in 2003, they kicked out all the Democratic conferees who opposed the private approach. Only Senators Baucus and Breaux, who gave the Republicans bipartisan cover, were allowed in the room. And recently, Baucus hired Michelle Easton as his chief staffer on drug issues. She previously worked for Breaux, then became a lobbyist for PHRMA, representing the drug companies.

Senator Debbie Stabenow will shortly introduce a bill with several co-sponsors, that would restore Medicare's authority to negotiate drug prices and offer a direct Medicare plan that fills in the “doughnut hole.” But Stabenow will count herself lucky if much more than half the Democratic caucus supports her bill.

Other centrist Senate Democrats have their own pet fixes. For instance, Bill Nelson of Florida, facing reelection this year, wants to give seniors a year in which to change private plans without facing penalties. It's a benign small-bore improvement—which ducks attacking the whole Bush approach. Still others, like North Dakota's Kent Conrad, resist a wholesale repudiation of the Bush bill because they voted for it. So, among Senate Democrats the big risk is: mixed message.

OVER ON THE HOUSE SIDE, THERE IS at least nominal unity. Nearly every House Democrat opposed Bush's legislation in 2003. This year, a bill sponsored by Marion Berry of Arkansas would restore a central role for public Medicare. House Minority Leader Nancy Pelosi's office says the bill will be the official Democratic alternative. But as we go to press, only 80 Democrats have signed on.

MEDICARE

PRESCRIPTION FOR LEADERSHIP

Can the Democrats take advantage of a huge Republican failure?

BY ROBERT KUTTNER

SEEMINGLY, DIVINE PROVIDENCE has delivered the Democrats the perfect issue for 2006—the epic Medicare prescription-drug screwup. Far from being an abstract (if grave) public issue like nuclear non-proliferation, this one hits up close and personal. If you don't feel the drug debacle directly, you know about it from Mom or Grandpa.

With its bewildering and useless “choices” of dozens of plans and vendors, its additional costs to more than six million low-income elderly Medicaid patients, its “doughnut hole” of huge out-of-pocket expenses, and windfall profits to the drug and insurance industries, the debacle also vividly demonstrates a core Democratic precept: Sometimes public purposes are better achieved directly through the public sector.

Nor is this just a case of start-up glitches (when public Medicare began in 1966, there were few administrative problems). The fragmentation, inefficiency, and burden to the elderly are the predictable consequence of Bush's treatment of his program as a bonanza for the drug and insurance industries.

UNLIKE THE PLAN, THE REMEDY ISN'T complicated. It almost writes itself: Get rid of the parasitic private-insurance vendors and move the program back into public Medicare. Have modest co-pays rather than a doughnut-hole that can leave old folks paying upward of \$3,000 out of pocket every year. Pay for that fix by restoring Medicare's ability to negotiate bulk discounts with drug companies, as the Veterans Health Administration does.

Likewise the election-year message: Republicans are not serious about governing. They ruin programs that citizens actually value—by turning them into giveaways to special business interests. “This issue is as real to seniors as it's ever going to get,” says former Democratic Senate leader Tom Daschle.

So this strategy is central to the Democrats' 2006 campaign, right? Well, sort of. The party is hobbled by three old reliables: ideological division, freelancing on the part of diverse senior legislators, and a leadership that has trouble staying focused.

In the Senate, the ranking Democrat on the Finance Committee, Max Baucus

One problem is getting Pelosi's attention. A key Democratic policy aide complains, "They have the attention span of a gnat."

A related problem is that senior Democrats still subconsciously fancy themselves as the party of government. John Dingell, the ranking Democrat on the Energy and Commerce Committee, has a good bill to make sure the disabled get needed medications and that states are not left holding the bag. Pete Stark, another certified progressive, has a bill to extend the enrollment period and waive late fees. All good ideas—but with Republicans terrified of reopening any aspect of the program, these bills stand little chance of passage and risk muddying the overall Democratic message that the entire Republican approach is wrong.

Tom Daschle says, "We had huge fights with Crippen, who was extremely ideological and beholden to the Republicans. It was flatly illegal."

Some fiscally conservative Democrats worry that improving benefits under public Medicare would increase costs. But a study by the economist Dean Baker of the Center on Economic and Policy Research calculates that getting rid of private insurance vendors and restoring Medicare's negotiating authority would save about \$600 billion, enough to close the entire doughnut hole and return money to the Treasury.

Here, the supposedly bipartisan Congressional Budget Office (CBO) has played an instructively sneaky role. Until recently, CBO miraculously seemed an oasis of relative honesty and professionalism. You could actually trust its budget projections as good faith efforts rather than partisan spin. Former CBO Director Dan Crippen, a Howard Baker protégé who directed the office from 1999 to 2003, was even attacked from the right for refusing to cook projections in line with supply-side assumptions that tax cuts would supposedly increase revenues.

But CBO's role in the prescription drug affair has been shamelessly partisan. For starters, when the Bush White House first proposed the idea and fiscal conserva-

tives in both parties blanched at the likely cost, CBO helpfully low-balled the true budget impact. In 2003, CBO pegged the 10-year net cost at just under \$400 billion. Today, CBO admits it's more like \$600 trillion, and the Department of Health and Human Services (HHS), which actually runs the program, now puts the figure at \$797 trillion. That projection, in turn, was recently reduced (February 2) from last year's HHS estimate of \$926 trillion, in part because the sheer complexity of the program is dissuading so many people from signing up.

But the more serious mischief came in the way CBO scored the impact of eliminating Medicare's right to negotiate drug prices and the privatization of the whole program.

As early as 2002, Crippen was insisting in meetings with senators, based on no evidence whatever, that a Medicare drug program run by private insurers would yield a net savings. Because of this premise, CBO continues to insist, absurdly, that putting the drug program back in public Medicare would *add* costs. Daschle says, "We had huge fights with Crippen, who was extremely ideological and beholden to the Republicans, and just did their spin. It was flatly illegal."

CBO didn't deign to crunch any numbers. It simply made a grand assumption that competition, by definition, must lower prices. In letters to Senate Majority Leader Bill Frist and Democrat Ron Wyden in early 2004, Crippen's successor, Douglas Holtz-Eaken, contended that "risk-bearing private plans will have strong incentives to negotiate price discounts." But CBO ignored the fact that the fragmentation of multiple plans undercut the ability of any single plan to bargain hard.

Subsequently, Families USA conducted a detailed survey comparing what Medicare drug plans and the Veterans Health Administration paid for the 20 most heavily prescribed drugs. The VA sets a

schedule of prices, and sure enough, the median cost to the Veterans hospitals was 48 percent less than the cost paid by the lowest-cost private Medicare plan.

A similar study by Congressman Henry Waxman found that drug prices offered by 10 leading Medicare drug plans are more than 80 percent higher than federally negotiated VA prices. The Medicare drug plan prices are higher even than retail prices available from Drugstore.com and Costco.

But CBO has declined to revise its projections. "Their 2003 assumption has been tested," says Ron Pollack, executive director of Families USA. "I don't know how in the world CBO can possibly justify that estimate, given what we now know."

IN THE 1990S, PRIVATE INSURERS WON the right to offer managed-care plans to compete with public Medicare. Their costs proved higher than conventional Medicare, even though they cherry-picked healthy oldsters and exported sick ones back to the public system.

But this opening to private insurers was the camel's nose under the tent. Today, after the insurance industry has had nearly three years to insert itself into a new trillion-dollar bonanza, few Democrats have the nerve to kick the industry out altogether. Even the relatively liberal Democratic bills merely require Medicare to offer a public program to compete with private ones. "We hope that most people would just sign up for the public Medicare plan," says an aide to a key congressman.

There is also some timidity about serious regulation of drug prices, disparaged as "price controls." But the rest of the health-insurance system uses price controls. Medicare, Medicaid, and private insurers all regulate the prices they pay doctors and hospitals. It's only drug makers who get to set their own prices and have government pay.

We've had an instructive experiment here, and privatization fails. Restoring the drug program to public Medicare would be far more cost-effective and user-friendly. It could be a giant step toward universal, single-payer health insurance generally. But will Democrats make good use of it?

The columnist Ellen Goodman, praising the late Betty Friedan's contribution of giving political voice to women's private struggles, recently wrote that "the most powerful catalyst for change [occurs] when people learn what they already know." In this sense, political leadership can be defined as helping bring about a political understanding of assaults people already know from their daily lives.

Americans know, personally, that Bush's drug program is a bomb. If Democrats can summon up a measure of principle and unity, the Medicare-drugs issue could vividly demonstrate why right-wing government is bad for ordinary people. If not, the voters will hear merely a medley of diverse Democratic complaints—a multi-pitched election-year whine. **TAP**

IRAQ

THE ITALIAN JOB

If anything, a visit to Rome only deepens the Niger forgeries mystery.

BY LAURA ROZEN

ROME—

IN THIS ANCIENT CITY, JUST AS IN Washington, the origins of the infamous Niger yellowcake forgeries—the documents purporting to prove that Iraq was contracting to purchase vast quantities of uranium and cited by George W. Bush in his 2003 State of the Union address as a pretext for war—continue to bemuse political observers. So often do such intelligence scandals erupt and recede in the operatic world of Italian politics that the public knows the surface story is almost never the truth—especially with a hard-fought election campaign scheduled to conclude in April.

Rather than an honest investigation, the Silvio Berlusconi-linked media machine has orchestrated a series of disinformation campaigns, accusing the journalists who have investigated the Niger forgeries of joining an international conspiracy to discredit Berlusconi. The conspiracy theories are Byzantine in detail and rhetorically overheated.

In early February, the Italian Parliament's intelligence committee issued a bland, 59-page report that rubber-stamped the ongoing cover-up of the forgeries scandal by the Military Intelligence Security Service, known by its Italian acronym as SISMI.

Yet many of the relevant facts were revealed last October by Rome's independent, left-leaning *La Repubblica* newspaper. Behind the scheme were

three individuals connected with SISMI—Rocco Martino, a former Italian secret agent turned freelance intelligence peddler; Colonel Antonio Nucera, a recently retired deputy chief of SISMI's counterproliferation division; and a woman code-named "La Signora," a longtime SISMI asset working as a secretary at the Niger embassy in Rome—who came together sometime in 1999 or 2000. Their collaboration resulted in the distribution of forged documents to foreign intelligence services and to at least one reporter at a Berlusconi-owned magazine.

No one in the U.S. government has denied that SISMI was the source of two reports to the CIA, in October 2001 and February 2002, about alleged Iraqi attempts to acquire yellowcake uranium from Niger. The second, more detailed February 2002 report turned out to be almost an exact transcription of information contained in documents that in March 2003, the International Atomic Energy Agency (IAEA) swiftly determined were "crude forgeries." Incredibly, the Italian government still denies that SISMI was the source of those reports while U.S. intelligence officials roll their eyes.

"The Italians gave the report to us, knowing its quality," says Wayne Wight, former deputy director of the Middle East bureau of the State Department's Bureau of Intelligence and Research. "The thing that continues to fascinate me is why the whole issue of the Niger documents ever

became important. I hardly even watched it when it [the Niger yellowcake claims] first came up. To some degree I was naively thinking it would be of no importance, since the country [Iraq] already had vast quantities of yellowcake which were regarded as insignificant by the IAEA because Iraq didn't have the industrial ability to do anything with it."

While the Bush administration's reasons for accepting the claim behind the forgeries are all too obvious, the motivation of those who created and circulated them remains mysterious. Speculation has ranged from disgruntled CIA spooks seeking to embarrass the Bush administration (a theory noted by journalist Seymour Hersh); to French intelligence acting on anti-American animus (promoted by neo-conservative Michael Ledeen and SISMI); to crooked Italian spooks seeking a buck (also floated by SISMI); to American neo-conservatives conniving to justify the invasion of Iraq (favored by many on the left). But recent interviews in Washington, D.C., as well as Rome and Milan indicate that the most plausible explanation may also be less sensational.

THE STORY BEGINS IN LATE 1999 OR early 2000. Rocco Martino was a freelance "security consultant" conversant with the Arabic and Francophone diplomatic corps in Rome and Brussels. A former *carabinieri* and Italian intelligence officer, he was in occasional contact with his former police colleague, Colonel Antonio Nucera. Nucera tells Martino that he should meet with an Italian woman who works in the Niger embassy in Rome, a longtime asset code-named "La Signora." She has something for you, said Nucera.

When Martino met La Signora, he arranged to pay her for documents, which he would then sell to his clients. These curios included a Niger diplomatic codebook (circa 1967) and copies of diplomatic cables organizing an Iraqi diplomat's trip to Niger in 1999.

La Signora also gave him the forged contracts and cables supposedly proving Iraq's purchase of 500 tons of yellowcake uranium from Niger. Until now, press reports have indicated that La Signora concocted these documents in the Niger

embassy with the help of an official from Niger. But new evidence suggests she got them from officers within SISMI itself.

The *Prospect* has independently confirmed that Martino identified two other SISMI agents, along with Nucera, who were involved in the forgery scheme from the beginning. According to a source who checked out the names Martino provided with SISMI contacts, the second agent "was a major in the [Italian] Army, and he is now a SISMI branch chief," and the third was brought to SISMI from the Guardia di Finanza [fiscal police] by SISMI director Nicolo Pollari. "Because of this, he can do no wrong," this source said. Nucera and a second SISMI official involved in the Niger scheme work in SISMI's eighth directorate on weapons-of-mass-destruction counterintelligence, while the third SISMI official works in the agency's first directorate.

Why did the three intelligence agents, led by Nucera, introduce the intelligence peddler Martino to their Niger informant? In 2003, as Joshua Marshall has noted, the inspectors general of the CIA and the State Department suggested a theory in their *Joint Report on the Alleged Iraqi Attempts to Procure Uranium from Niger*. According to that report, SISMI officers allegedly approached the CIA Rome station chief to propose a counter-intelligence operation against the suspected chief of Iraqi intelligence in Rome. They apparently meant to sting him with forgeries suggesting uranium traffic.

A retired senior U.S. intelligence official told the *Prospect* he was briefed on SISMI's suggested sting at the time: "They were trying to get him [the suspected Iraqi spy] recalled to Iraq." The CIA declined to be involved.

IN SEPTEMBER 2002, MARTINO CALLED an Italian journalist with whom he had done business before. Elisabetta Burba of Berlusconi's *Panorama* magazine was out of the country when her office relayed Martino's message. Years earlier, he had sold her sensational (and genuine) documents on the Bosnian crisis. One set showed Islamic terrorist backing of a Muslim charity working in the Balkans.

When she returned Martino's call, he

asked whether she knew which African Islamic nation was trafficking uranium to Iraq, then mentioned a short September 25, 2002, article in *Corriere della Sera*, the right-leaning Rome daily newspaper, that floated the allegation without naming Niger. Clearly someone was trying to get the idea into circulation. Around the same time, as first reported in *La Repubblica*, SISMI chief Nicolo Pollari flew to Washington where he met briefly with White House Deputy National Security Advisor Stephen Hadley.

On October 7, 2002, Burba met Mar-

Niger, she discovered that the papers were absolute garbage. She and her editor decided to publish nothing and refused to pay Martino the 20 million Italian lira (about \$10,000) he had requested.

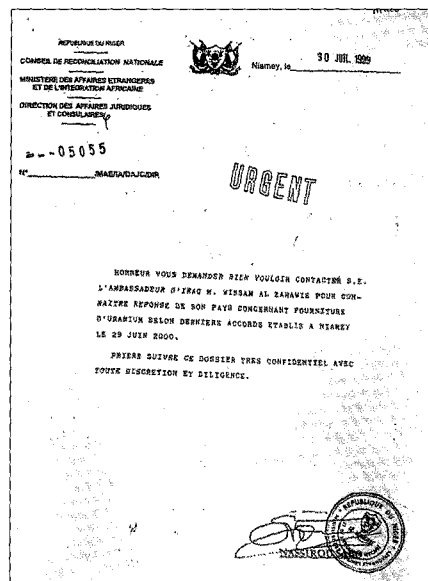
Meanwhile, however, the documents were transmitted to the State Department where—despite the skepticism of intelligence officials—they became a source of fascination for the White House. Ultimately the yellowcake claims surfaced in Bush's State of the Union speech.

Martino also seems to have sold his forgeries to the French and the British as well. The British, in turn, reported to the United States separately that they had evidence that Iraq was seeking to purchase uranium in Niger. To this day the British insist they have other sources, but an IAEA spokesman says they have ignored the agency's requests to produce that evidence.

FOR THE LAIR OF A WORLD-SHAKING conspiracy, Niger's embassy in Rome is quite modest, located in a pleasant tree-lined neighborhood not far from the bustling Piazza Mazzini. From the sixth-floor balcony of an apartment in an unpretentious brick and faux-marble building hangs a tired orange, white, and green flag of Niger.

On a recent winter morning, a pleasant-looking Italian brunette somewhere in her 50s answered the embassy doorbell. She explained politely in French that many journalists have come by, but interviews are forbidden. Asked about La Signora, the woman looked down and replied, "She is no longer here." Whether or not this is "La Signora" herself, she fits the description provided by a source who has met the SISMI spy.

With so little effort devoted by the Italian and U.S. governments to uncovering the origins of the Niger forgeries, it seems quite possible that La Signora has never found it necessary to quit her day job. She isn't the only one. Martino, the acknowledged peddler of the documents, continues to reside near Rome. Nucera, in his 60s, retired sometime before his name surfaced publicly but continued to consult at SISMI. Both of his SISMI co-conspirators, whose names are being withheld by the *Prospect* out of respect for their



Looks Real: But it's not.

tino at a Rome café where he showed her the Niger documents. Some were in diplomatic code, others in French. After decoding them with Martino's help, Burba immediately doubted their authenticity. Nevertheless she brought them to her editor in chief, Carlo Rossella, a Berlusconi favorite who has since been promoted to a senior position at a television station owned by the media mogul. Somehow Rossella arranged for her to bring the documents to the U.S. embassy in Rome.

Soon after she received the documents from Martino, Burba visited the American compound. Greeting her there was an Italian government press official, who introduced her to the top U.S. press official in the embassy and two other male embassy officials. She let them make a copy of the documents.

Checking them out later on a trip to

undercover status, still work there.

It is their bosses who must know the answer to the most important remaining question: If SISMI created the forgeries for a counterintelligence mission, why did the agency later seek to promote the information in those same forgeries in Washington on at least two occasions?

The *Los Angeles Times* recently re-

ported that the FBI has reopened its probe of the forgeries, as has a prosecutor in Rome. But the political reluctance in Rome as well as Washington to clear up this troubling case does not bode well for their success. **TAP**

Laura Rozen is a Prospect senior correspondent.

CAMPAIGN '06

ASHES OF ACT

After defeat in 2004, progressive turnout groups mount the horse again.

BY MARK LEON GOLDBERG

IN THE SUMMER OF 2005, THE DIRECTOR of the largest voter-mobilization organization that progressives have ever seen, sent e-mails out to most of its 30 staffers warning them that their paychecks would be cut off by the end of August. America Coming Together (ACT), the flagship progressive "527" organization, headed by former AFL-CIO political director Steve Rosenthal, was running out of cash. Its major backers, George Soros and Peter Lewis, who together put \$38.5 million into ACT (and a partner organization, the Media Fund), declined to sustain their commitment following the 2004 election. State offices closed down, and the get-out-the-vote behemoth that at its peak boasted 6,000 employees and 78 field offices now had but a tiny number of staffers.

It wasn't supposed to end this way. Born a year before the presidential election over a dinner conversation among longtime Democratic operative Harold Ickes, EMILY's List founder Ellen Malcolm, and Rosenthal, ACT sought to identify progressive voters in key states and lead them to polls. By Election Day, ACT had raised some \$140 million, registering hundreds of thousands of voters—mostly in swing states—and turning them out to vote in record numbers. In Ohio alone, ACT registered 85,000 new voters.

ACT was a member of a larger coalition called America Votes—an assortment of 32 progressive and labor

organizations like the AFL-CIO and the League of Conservation Voters—that registered an additional 215,000 voters in Ohio. On November 2, ACT's field operation delivered a good chunk of these voters to the polls.

It turned out, of course, that the right delivered a few million more. But even in defeat, ACT held out the promise of installing on the political landscape a permanent progressive get-out-the-vote infrastructure. A little more than a year later, though, ACT is all but history.

Looking forward to 2006, this narrative would seem to suggest a return to the usual state of liberal disarray. After all, if ACT couldn't succeed with all that money—and with the heat that a presidential race stirs—then how could this year be any better?

Dejection, however, is not the prevalent mood among liberal-organizing groups. A perception of Republican vulnerability has inspired many organizations to expand their operations this November. The AFL-CIO is enlarging its voter-mobilization campaign from 16 states in 2004 to 20 in 2006. And officials at EMILY's List, the premier fund-raising organ for Democratic pro-choice women, tell the *Prospect* that compared to this point in 2004, they have two times as many candidates who have raised four times as much money as their counterparts in 2004. Can the 527s repeat their 2004 efforts—but to a more positive effect?

FIRST, THEY HAVE TO CONTINUE TO exist. Ever since the 527s (so-named for the section of tax code to which they owe their existence) distinguished themselves as a Democratic tour de force in 2004, the Republican Congress has attempted to legislate them into the ether. The first assault was launched in April 2005 when Republican members of the Senate Rules Committee passed a series of resolutions that would at once kill 527s while increasing the monetary amounts individuals and corporations can give to political-action committees and individual candidates.

That effort failed. But late last year, House Speaker Dennis Hastert announced that "527 reform" was a top legislative priority in 2006. Since then, the Republican House leadership has expressed an interest in inserting 527 reform into a larger package of "must pass" lobbying-reform measures. House Minority Leader Nancy Pelosi and Senate Minority Leader Harry Reid consider this a non-starter. John McCain, the Senate's lead Republican on lobbying reform, has so far hesitated to include such a poison pill in his proposal.

McCain's withdrawal from lumping 527s with lobbying reform was only a tactical retreat. He and other lawmakers remain committed to doing away with 527s in their present form, with the bipartisan quartet of McCain and Russ Feingold in the Senate and Chris Shays and Marty Meehan in the House offering legislation that would limit the soft money flowing to 527 groups and further regulate their advertising.

According to the Center for Responsive Politics, four out of the top five 527s most active in the 2006 election cycle thus far are labor or progressive groups focused on voter turnout in November. And though some Democratic legislators like Barack Obama have offered to pursue 527 reform along a "parallel track" to lobbying reform, it is doubtful that a sufficient number of his colleagues are willing to bite the hand that feeds them. And to the extent that 527s also offer bipartisan support (the third most active 527 at the time of publication was the right-wing Progress for America), movement on the quartet's reform plan will likely be limited.

ASSUMING THE 527S SURVIVE CAPITOL Hill, a successful get-out-the-vote strategy for the 2006 mid-terms will depend on identifying and mobilizing the right kinds of voters. To that end, ACT's swan song was a novel experiment in the 2005 Virginia gubernatorial race to test strategies for better reaching so-called drop-off or infrequent voters—those who cast ballots in presidential years, but stay home otherwise (results of the experiment were not yet available).

When the numbers are crunched, they will be shared with America Votes' 32 member groups—who, since 2004, are growing accustomed to working together. "The partner organizations of America Votes felt that coming together at a common table, talking about our plans, and jointly figuring out how to work together was immensely successful," says Kathy Duvall, who left America Votes to become the national political director of the Sierra Club, one of America Votes' largest members.

This increased contact has weaned progressive organizations away from their traditional hostility to sharing voter lists and other proprietary information with one another. Even more so than in 2004, America Votes is poised to match the right's messengers with the voters who want to hear from them. "We are trying to avoid what historically has happened on the progressive side," says Cecile Richards, who led America Votes until February when she became the president of Planned Parenthood Federation of America. "Which is, the same ten voters get bombarded by mail and phone calls from every progressive organization in America and meanwhile we leave tons of people that have no contact."

The Cook Political Report lists 21 Republican House seats as most vulnerable, with some 23 others in play. There are also hotly contested statewide races in Ohio, Minnesota, and Pennsylvania—places where America Votes has state directors, some who are alumni from the 2004 election. "In 2004 dropping someone like me into the state and getting them to coordinate all these folks' campaign activities was reliant on a fair degree of trust and familiarity that took a

while to build," says Scott Nunnery, America Votes' Ohio director. "This time around, we don't have to get to know each other. We are actually trying to get on the front end and are building programs that make sense in the context of this year."

SO THE LABORERS IN THE POST-ACT field have a more positive story to tell—so far—than one might have thought. Of course, they sounded like this in the early part of 2004, too. The moral of 2004 is that there are certain problems no amount of organization can

solve—the quality of candidate(s) the ground operation is supporting, and the ageless problem of the lack of a coherent Democratic message.

Finally, there's always the other side: In October 2004, there was boundless enthusiasm on the liberal side about the extent of the mobilization; then came November 2, and people realized that the right had out-mobilized them by a few million voters. It will be interesting to see, this fall, whether previous victory or previous defeat turns out to be the bigger motivator. **TAP**

IN THE STATES

WAGE WAR

A red-state wedge issue, but for the progressive side: the minimum wage

BY J. LARRY BROWN AND DAPHNE HUNT

BOB SCHWARTZ IS OUT TO RAISE Arizona's minimum wage. Or, more accurately, he's trying to create one, since the state has no minimum wage of its own and relies instead on the federal standard, which has been stuck at \$5.15 since 1997. Last summer the Tucson lawyer launched a campaign to collect 300,000 signatures to secure the necessary 183,917 to place a minimum-wage referendum on the state's ballot. Schwartz's campaign, Five Fifteen Isn't Working, recently folded into the broader work of the Arizona Minimum Wage Coalition, which seeks an Arizona hourly minimum of \$6.75. Notably, the campaign includes the highly effective Association of Community Organizations for Reform Now (ACORN).

The United States is approaching the longest period ever without an increase in the federal minimum wage, the current record being from 1981 to 1990. Federal inaction since 1997 has eroded the purchasing power of the minimum wage by about 21 percent—leaving low-wage employees increasingly worse off, particularly in an era of mounting prescription drug and exploding energy costs.

Yet improving the wages of low-income workers is not Schwartz's sole objective. He sees something much broader at stake: the Democratic ticket.

Schwartz, who made a failed bid for state legislature in 2002 and has since remained active in the state Democratic Committee, took away a major lesson from the 2004 elections: Democrats must be on the offensive about issues put before voters. Referenda states, says Schwartz, see political debates dominated by one or two key initiatives, and this has in recent history been to the advantage of Republicans. In 2004, Schwartz notes, "the political discussion was frozen by the immigration discussion ... no political campaign could get started without it." When Schwartz ran for office, the issue du jour was Indian gaming; in 2006, he believes, it will be gay marriage, immigration ... and the wage floor. "The Democratic issue ripe for the ballot will be minimum wage," he predicts.

While the inadequacy of \$5.15 an hour must be addressed, Schwartz also contends that with a minimum-wage campaign, "the values of the Democratic party need to be brought to the forefront and referenda issues captured in states like Arizona ... that's where the battles are fought," with Democratic incumbent Governor Janet Napolitano up for re-election this year.

Schwartz isn't the only one emphasizing the political significance of minimum-wage campaigns to highlight basic value differences between Democratic and

Republican positions. ACORN is focusing its 2006 minimum-wage campaign efforts on Colorado, Michigan, and Ohio—all states with important statewide elections this year. Alongside the benefits of increased workers' wages, ACORN sees minimum-wage campaigns as motivating voters and differentiating candidates. Living Wage Director Jen Kern explains, "At ACORN, we want to enact good policy and at the same time engage infrequent voters in the democratic process. This involves putting something in front of them that they care about."

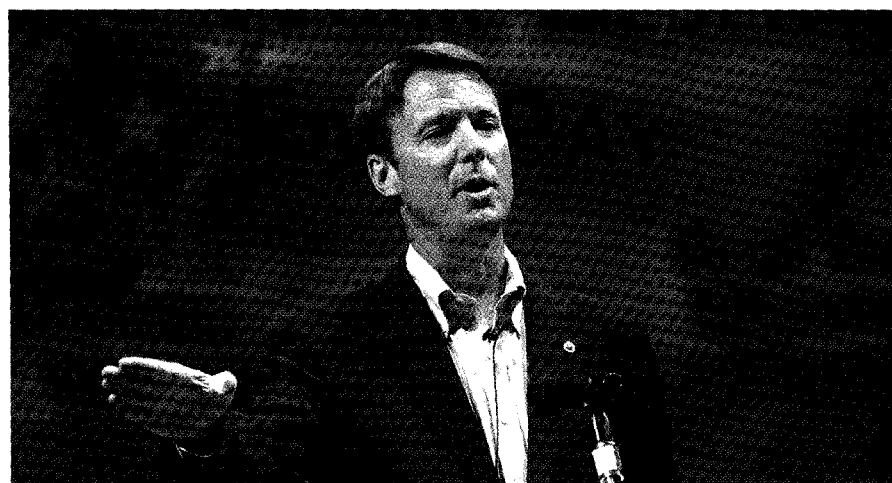
Of note is John Edwards. Accompanied by ACORN's President Maude Hurd, Edwards has visited Arizona, Michigan, and Ohio, calling for grassroots efforts to increase state standards in the face of federal inaction. This, says Kern, is exactly what John Kerry failed to do in the 2004 election in places like Florida and Nevada—both "red" states whose voters endorsed higher state minimum wages by 71.3 percent and 68 percent respectively, even as they went for George W. Bush.

THE JUXTAPOSITION OF STATE ACTION and federal inaction is re-defining the politics of the minimum wage. Frustrated and angered over the pittance that is \$5.15 an hour, community organizations and labor unions are harnessing the mobilizing power of minimum-wage campaigns, and many politicians are eager to sign on. Even the economic arguments traditionally raised in opposition to wage hikes are being turned on their heads as 18 states have now opted to enact minimum wages above the federal ceiling. In Pennsylvania, where the old argument that higher minimum wages cause businesses to flee has been supplanted by the claim that the state will lose *workers* to higher-wage neighbors New Jersey and New York.

Notes ACORN's National Field Director Helene O'Brien, "this is not about turning out a particular constituency to vote in a certain way, but about sending out a message to elected officials that 'this many people' vote on issues that are important to workers." That the minimum wage is not necessarily a partisan issue among voters perhaps plays even more at the local level, where citywide mini-

mum-wage campaigns are nurtured by federal-policy inaction.

Albuquerque is one such example. Last October, voters very narrowly rejected a proposal to raise the minimum wage to \$7.50, by a margin of 51 to 49. But that campaign in turn led to a statewide legislative campaign for a \$7.50 minimum, which is now backed by the governor and the Democratic majorities in both houses, and as we go to press looks a good bet for passage. During the campaign, ACORN Head Organizer Matthew Henderson observed that, "we don't see a lot of elected officials coming out and supporting this.



Honest John: Edwards is leading the call for states to take action.

But from talking to voters and doing polling, people think the minimum wage is ridiculously low and they support an increase. So while a lot of Democrats see this as their issue, a lot of Republicans support this as well." This bipartisan appeal has political ramifications that extend beyond the effects of wage improvement. "Any time you have a campaign that makes progressives stronger [and] that cuts against partisan lines and that has lots of Republican support," Henderson adds, "in the end it's going to make us stronger. It's going to put Congress and the Bush administration in a tougher and tougher corner."

LOCALIZED COMMUNITY ORGANIZING around wages usually is in support of "living" wages—often, significant increases in the wage floor for select groups of workers such as city employees. The shift to minimum wage now raises questions:

Whither the living-wage campaign? Will the new politics of the minimum wage squelch efforts to attain more substantial raises for low-income workers, by diverting the wind behind living-wage sails? Is voter frustration over eight years of \$5.15 a different beast than voter concern for regionally responsive "living" wages?

The answer to each question is probably no. Organizers with ACORN, whose efforts in the past have been directed toward living-wage campaigns, argue that minimum-wage mobilization is in fact a direct extension of living-wage efforts. "We've begun shifting from living-wage to

minimum-wage campaigns for a couple of reasons," says Henderson. "We've been successful with living wage, and the minimum wage is a way to keep the movement evolving. Also, an urgency has grown every year since 1997. Minimum wage is hugely popular. Either through legislative tactics or the ballot box, there is a huge groundswell of support."

The upside to federal inaction, then, is this bolstering of state and local organizing. This organizing is attended, Kern and others contend, by the building of large coalitions across a broad range of groups: community-based organizations, labor unions, and—as we see in the case of John Edwards—politicians. O'Brien highlights the fact that while the 2004 effort in Florida was led largely by ACORN, more and more we see true "coalition efforts" as more people get on board. "Minimum wage has been a catalyst at the local level to build strong relationships," she argues.

It is interesting to speculate what would happen if a federal hike *did* take place? If Senator Edward Kennedy's bid for a \$7.25 rate passed, would we see a closing of this particular window of opportunity for community mobilization and political positioning? Almost certainly not. According to O'Brien, "this is the beginning of a long and beautiful friendship. It's not just a campaign, it's the ability to build an infrastructure." ACORN cites its ability to build a coalition from the local level up as its key to state-level success — and this is an infrastructure they don't see going away. "If the federal minimum-wage increase flew," claims Kern, "then we would probably see a shift back to traditional living-wage campaigns ... we won't see the end of a movement ... these same coalitions, they are the same ones that want things like health-care improvements."

And the truth is no one sees a federal hike taking place anytime soon. For now

we can expect state and local minimum-wage campaigns to flourish and increases in minimum-wage workers' incomes to follow as continued successes are achieved across the country. We would be remiss, however, if these were the only victories to which we are attuned. Minimum wage is an issue representative of Democratic values. As such, campaigns embracing fair pay for hard work carry a political potency that could bolster the tickets of candidates. And left in the wake of such campaigns, we may very well see strong, broad, local coalitions championing a number of other progressive values and causes currently neglected by the federal government. **TAP**

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Daphne Hunt is a doctoral candidate at the Heller School.

IRAN

PERSIAN CAT-ASTROPHE

The shocking looniness of the regime-change advocates of the right

BY MATTHEW YGLESIAS

THE ATMOSPHERE ON THE MORNING of Monday, January 23, was more of a bad dream than a press conference. I was in a small room in the basement of the U.S. Capitol; sitting directly behind me amid the rows of cheap folding chairs was a young man from the National Union for Democracy in Iran, an obscure California-based exile group I'd never heard of seeking, yes, regime change in Tehran.

The walls were overcrowded with reproductions of John Audubon's brightly colored bird prints. At the front of the room was an American flag, a podium, a projection screen, and R. James Woolsey, former director of Central Intelligence who went more-than-a-little around the bend sometime after leaving the Clinton administration. He was one of the very first prominent commentators to finger Saddam Hussein as the likely culprit for the 9-11 attacks, doing so just after the

strikes when no empirical evidence could possibly support the contention, and maintaining his view steadfastly even as evidence continued to be non-existent.

Needless to say, such loyalty to his own imagination has done nothing to diminish his standing in the neoconservative world or his access to mass audiences on cable television. On that January day at the Capitol, he was speaking on behalf of the Committee on the Present Danger (CPD), a think tank he founded in the summer of 2004 with various neocon B-listers under the nominal auspices of Senators Jon Kyl and Joe Lieberman. The occasion was the release of a six-page policy paper on Iran, which to no one's surprise reached the conclusion that "the United States' policy objective must be regime change in Iran."

An early January breakdown of negotiations between the European Union and Iran had thrown the long-simmering issue of Tehran's nuclear ambitions closer

to the top of the public agenda. For more than a year, the Bush administration had been pursuing a low-key course, encouraging the Europeans to negotiate with Iran while not agreeing to participate directly in the talks, earning the sub-rosa hostility of conservative hawks who favored a more aggressive approach. Democrats, as usual, were divided. When the talks failed, the United States joined European allies to push the UN Security Council to take up the issue. In this they succeeded, but the crucial questions of what, exactly, Washington would ask the Security Council to do and what we'd be willing to do if the Council won't do it, however, remained unresolved.

At the Capitol Hill event, Kyl was on hand for the overrun-Iran festivities, along with Frank Gaffney from the Center on Security Policy and Alex Bellone from Public Opinion Strategies. The paper's main proposals, including various sanctions, are modest and are replete with appealing talk about targeting the regime rather than the Iranian people. But the paper also suggests that the Security Council impose "an embargo on refined petroleum products" going into Iran, a proposal that indicates a lack of seriousness on behalf of the paper's authors about targeting: Even the authors must know that Iran produces more than enough petroleum products to ensure that regime figures and favored individuals have all the fuel they need while the ensuing crippling shortages suffered by ordinary Iranians would be blamed on Uncle Sam's perfidy.

It's on the question of what to contemplate if multilateral diplomacy doesn't work that CPD members, hawks in the press, and on occasion Dick Cheney really go off the rails. They maintain that military options should be "on the table," and in pursuit of this agenda, engage in the all-too-familiar habit of threat inflation. When a relatively moderate president led Iran, hawks said the presidency was a weak and unimportant office. Now that it's held by Mahmoud Ahmadinejad, a man not afraid to flaunt his anti-Semitism, no discussion of the Iranian nuclear program is complete without a ritual recitation of Ahmadinejad's overheated rhetoric. Some hawks, like Jeffrey Bell, writing in the Feb-

ruary 6 *Weekly Standard*, have adopted a strategy of simply making things up, like claiming that Ahmadinejad not only “says the Jewish Holocaust never happened” (which he did say) but also “muses about the possibility of correcting that Nazi failure by dropping a nuclear bomb on Israel.” This last seems a highly unlikely statement since Iran officially denies that it has a nuclear program, it’s hard to imagine—and there’s no evidence—that Ahmadinejad ever “mused” about dropping a nuclear bomb on anyone.

Indeed, a lot of hawks are making a lot of things up. In a January 18 column Charles Krauthammer asserted that Iran is “probably just months” from having a nuclear bomb. Bill Kristol wrote in the January 23 *Weekly Standard* that Iran’s “nuclear program could well be getting close to the point of no return.” Just two days before Krauthammer’s column, Niall Ferguson used his *Los Angeles Times* column to argue that by 2007 Iran would not only have a nuclear bomb but would likely launch an unprovoked nuclear attack on Israel.

Back in the real world, no less an authority than Dan Halutz, chief of staff to the Israel Defense Forces, told the Israeli Parliament in December that “even if the Iranians pass the uranium-enrichment stage, they are still a number of years away from building the bomb.” Similarly, a National Intelligence Estimate (NIE) reflecting the consensus view of the American intelligence community concluded last year “that Iran is about a decade away from manufacturing the key ingredient for a nuclear weapon.” Kyl, who doesn’t sit on the Senate’s intelligence committee, thinks the NIE is wrong, saying at the press conference that “I would posit much closer than 10 years”—without offering any basis for that conclusion. At the same event, Gaffney pronounced himself “reasonably sure it’s not 10 years away”—a statement made with such a sneer you’d think the neocons had been right the last time they accused intelligence professionals of understating the urgency of a weapons-of-mass-destruction threat from a nation bordering the Persian Gulf.

Democrats, for their part, seem prepared to play their appointed roles yet again: an ungainly collection of lemmings

going off the cliff, ostriches with their heads in the sand, and chameleons changing color. Several Democratic congressional staffers concerned with the issue have told the *Prospect* that they’ve tried to raise the topic with superiors only to be informed that the party is comfortable counting on corruption and prescription drugs to see them through the midterms. “It’s 2002 all over again,” says one House foreign-policy aide.

Those Democrats prepared to engage with the issue, meanwhile, seem determined to follow the advice of *The New Republic*’s Noam Scheiber to try to “[get] to the right of the Bush administration on



Nuke Kook?: Mahmoud Ahmadinejad

Iran.” Leading the rightward swing have been Senators Evan Bayh and Hillary Clinton, both of whom hold the possibility of military force open if less dramatic coercive measures fail. Both also engage in some threat inflation of their own. In a February 2 speech to the Center for Strategic and International Studies, Bayh echoed Krauthammer’s claim that Iran “may be only months away from having the capacity to build a nuclear bomb” and stated categorically “that a nuclear Iran is not negotiable.” Clinton told an audience at Princeton’s Woodrow Wilson School of Public and International Affairs on January 19 that “we cannot and should not—must not—permit Iran to build or acquire nuclear weapons” and that “we cannot take any option off the table” in pursuit of that quest.

The problem with threat escalation on

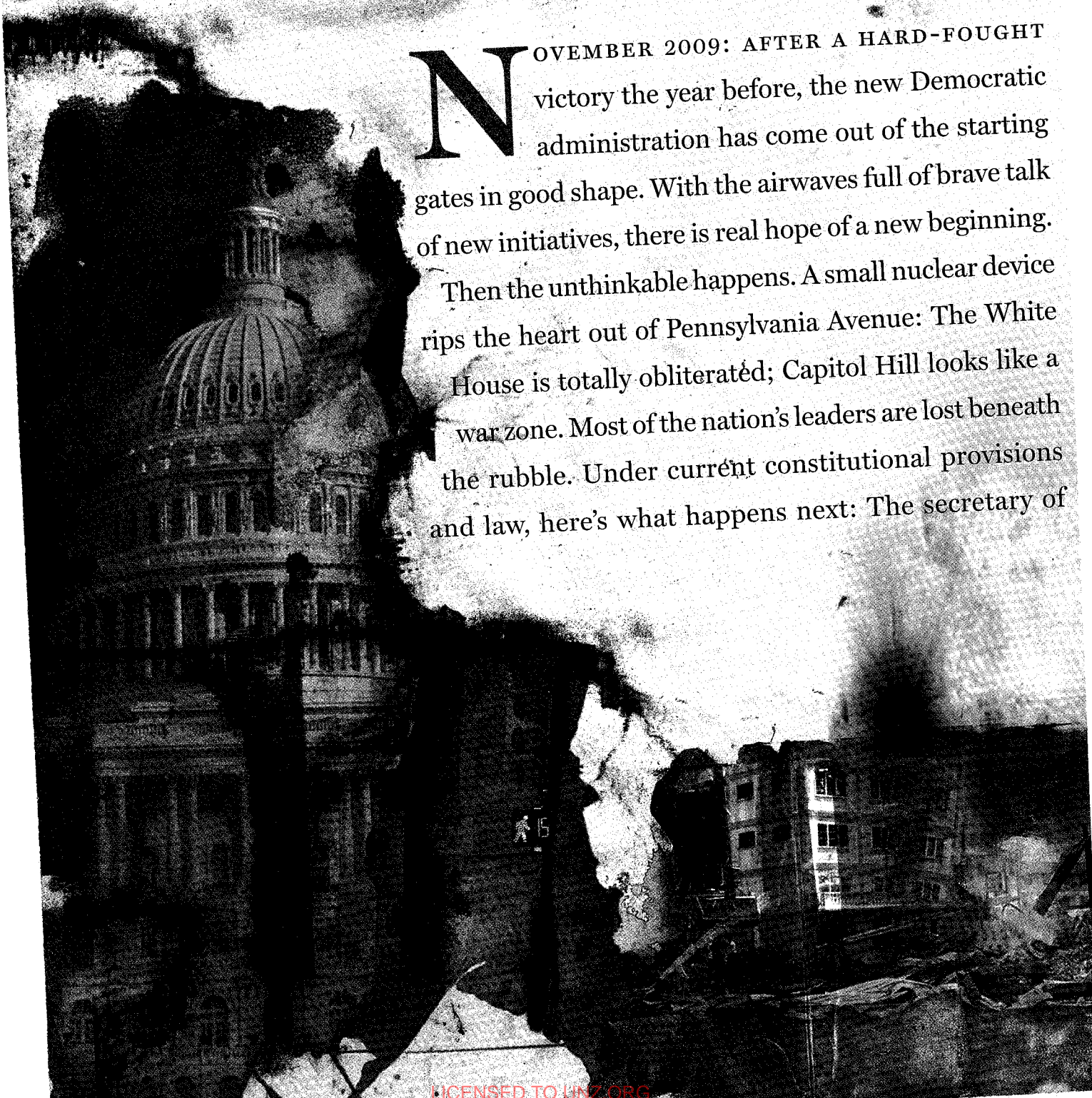
both sides is where it leads: to the inevitable conclusion that we must right now fight problems that are mammoth in scope while they are, in fact, not yet imminent. Bayh described Iran as “the foremost sponsor of terrorism in the world,” which is true in some sense, but none of the groups Iran sponsors has ever targeted American civilians for attack. Gaffney goes much further, painting an absurd scenario in which “nearly all computers in the United States” along with electrical grids are knocked out by an electromagnetic pulse caused by an Iranian nuclear missile launched from a frigate that’s somehow made its way to America’s coastal waters.

This is nonsense. The real Iranian threat, as former National Security Council hand Kenneth Pollack put it in congressional testimony last fall, is that “if Iran acquires a nuclear deterrent, it will believe that it is no longer vulnerable to external (that is, American or Israeli) conventional military retaliation and so can revert back to the aggressive, anti-status quo foreign policy it pursued in the early 1990s.”

That would be bad, but it’s far from a doomsday scenario requiring American military strikes. Such strikes would essentially force Iran to adopt the very same aggressive anti-American foreign policy they’re supposed to prevent. And, argues Joseph Cirincione, director for nonproliferation at the Carnegie Endowment for International Peace, military action “would delay the program in the short term, but would almost certainly accelerate it overall.” He notes that “no country that’s determined to get a bomb has ever been forced to abandon that pursuit,” so either the West will need to find a way to strike a diplomatic compromise or reconcile themselves to a nuclear Iran.

The fact that Democrats, tired of finding themselves on the losing end of the politics of national security, shy away from raising such concerns is understandable. And for the moment, the Bush administration is taking a fairly sensible, diplomacy-heavy approach to the problem, notwithstanding the unsound views of many members of its political coalition. But counting on the good judgment of the current White House is hardly a strategy that inspires confidence. **TAP**

IF WASHINGTON BLOWS UP



NOVEMBER 2009: AFTER A HARD-FOUGHT victory the year before, the new Democratic administration has come out of the starting gates in good shape. With the airwaves full of brave talk of new initiatives, there is real hope of a new beginning. Then the unthinkable happens. A small nuclear device rips the heart out of Pennsylvania Avenue: The White House is totally obliterated; Capitol Hill looks like a war zone. Most of the nation's leaders are lost beneath the rubble. Under current constitutional provisions and law, here's what happens next: The secretary of

Think the unthinkable: It's 2009, and our government is decapitated in a terrorist attack. Who will become Speaker? Who'll sit on the Supreme Court? And as for the presidency ... Herewith, an immodest proposal to prepare for a day we hope will never come.

BY BRUCE ACKERMAN ILLUSTRATIONS BY BRIAN HUBBLE

defense, safe in the Pentagon, seems to be the next in line under the presidential succession statute. After swearing to uphold the Constitution as acting president, he immediately puts the country under martial law, suspending habeas corpus until Congress once again comes into session.

A couple of hours later, he comes before the television cameras to emphasize the need for action on another front. As his second formal decision, he is replenishing the Supreme Court by appointing nine distinguished jurists—six Democrats and three Republicans—to serve

on the bench until the end of the congressional session. These recess appointments will assure the rule of law until the Senate can come back into operation and consider more permanent appointments.

Day 2. Emergency teams are hard at work searching for survivors. The secretary of state emerges from the ruins of Foggy Bottom. If the team had found her yesterday, she would have become acting president, since the succession statute places her first in line among Cabinet officers. But under the law, she lost her rights once the secretary of defense took the oath.

Day 3. The president pro tem of the Senate is in a different legal position: The statute does give him the right to bump the defense secretary out of office. The Senate was (narrowly) Republican before the blast, at which time it had selected a distinguished 86-year-old member to serve in this dignified, but powerless, position. Since the senior senator was at his suburban retreat at the time the bomb went off, he is safe and sound, and considers his options. The defense secretary, he is convinced, is a shallow, power-hungry, left-wing fanatic with dictatorial ambitions. After thinking about it overnight, the senator reluctantly concludes that the republic needs him. Rising to the occasion, he announces that

their first action, Democrats elect a new speaker, a relatively unknown female representative from Indiana.

In the meantime, the new acting president has fired the Democratic defense secretary and replaced him with a Republican protégé, giving him a recess appointment valid through the end of the congressional session. This dynamic young man aggressively follows through on his predecessor's declaration of martial law. He tells TV cameras that his troops will be sweeping thousands of suspects—aliens and Americans alike—into military custody, beyond the reach of any civilian court.

Day 5. The new speaker considers her options under the presidential succession statute. Just as the Senate president could bump the defense secretary out of the acting presidency, it gives her the right to bump him. What is more, she is the “unbumpable bumper”: The speaker will serve until the next election (subject only to impeachment). Nevertheless, she hesitates when she takes a glance at the Constitution: “A majority of each [House] shall constitute a quorum to do business.” Does this provision imply that she isn't really the speaker, since she had been elected on a vote of 31 to 19, and the Constitution implies that 218 members must be present in the chamber before a valid election can take place?

The secretary of state emerges from the ruins of Foggy Bottom. Yesterday, she'd have become president, but the secretary of defense had already taken the oath.

he will exercise his statutory option and serve as acting president.

Despite the senator's dark suspicions, the secretary does not resist this new transition of power. He immediately yields to the clear demands of the succession law, and accompanies the new acting president to the oath-taking ceremony: A shaken nation turns on the television to see one of its elder statesmen assume a position that will obviously overwhelm him.

Day 4. The House and Senate are beginning to revive. Acting under the 17th Amendment, governors in each state are appointing new senators to replace those found dead. In a few more days, the Senate will reconvene with a large complement of members.

The House is another story. The Constitution gives the voters the exclusive power to select replacement representatives. And it will take months before a series of special elections will return 435 living members to the makeshift Capitol. Nevertheless, in 2005 the Republican leadership foresaw the potential problem, and convinced the House to pass new rules specially designed for “catastrophic circumstances,” under which a “provisional quorum” is determined by the number of representatives who show up on the floor within 72 hours after being summoned.

Three days have now passed, revealing the devastating success of the terrorist onslaught—only 50 House members have managed to answer the call, making 26 a quorum under the emergency rules, and allowing the body to act on majority votes as small as 14 to 12. Before the blast, the House was narrowly under Democratic control, and this remains true in the rump House. Because none of the old House leaders have survived, as

After weighing the pros and cons, she decides that the framers would have supported the decision by the Republican 109th Congress to create an exception for emergency conditions—otherwise the nation would be unable to make any laws to respond to the ongoing crisis. She decides that she is the rightfully elected speaker of the House, takes the oath of office as acting president, and demands that the Senate president recognize her authority.

But he refuses—and no less importantly, so does the dynamic new Republican defense secretary, who denounces Ms. Speaker as a weakling unfit to govern the country at its most perilous hour. Democrats respond by praising the wisdom of Dennis Hastert in promulgating the new rules. Republicans insist on obedience to the plain meaning of the Founding Fathers' commands.

Meanwhile, the country pays homage to the fallen president and vice president in solemn rites in Arlington.

Day 6. The new speaker sues to obtain the presidency, and the case is expedited to receive rapid treatment by the reconstituted Supreme Court (See Day 1).

Day 10. The Supreme Court hears oral argument and ponders the briefs. The nation waits. The secretary of defense pushes onward: Rumors suggest that more than 50,000 Americans are in custody, but the exact number is a national security secret.

Day 11. The country waits. Rumors of an impending terrorist strike generate widespread panic.

Day 12. The Supreme Court, by a vote of six to three, decides that the speaker is now acting president, and orders the present incumbent to recognize her authority.

Republicans are outraged at the defiance of the Founding

Fathers, and point to the ringing denunciation of the majority by the three dissenters (who happen to be the Supreme Court's three Republican members).

Day 13. Silence from the provisional presidential office in Richmond, Virginia.

Day 14. Live from Richmond: "My fellow Americans, after considering my obligations to you and to the Constitution of the United States, I hereby accept the judgment of the Supreme Court and recognize Madame Speaker as acting president of the United States."

Day 15. An anthrax attack kills 7,000 in Chicago.

WE HAVE A PROBLEM—BUT NOT ONE THAT CAN'T BE solved. All it will take is some foresight and institutional creativity, and a bit of political leadership—not a lot, since only praise will come to those hardy politicians who lead the country to think about the unthinkable.

How likely is it that a doomsday scenario will occur, say, over the next half-century: one chance in a thousand, or five hundred, or one hundred? Hard to say, but it isn't one in a million, and that should be enough to lead us to take action.

I will begin with the presidency, move on to the Supreme Court, and conclude with the House. (The Senate only needs minor fixes.) As my opening scenario suggests, piecemeal solutions won't do the trick. Although formal constitutional amendments are not required, we do need to engage in serious constitutional thought, designing each part in light of the emerging institutional whole. We need an "emergency constitution."

THE PRESIDENCY

We owe the present succession statute to Harry Truman, who, upon succeeding Franklin Roosevelt, was dismayed to learn that the secretary of state was next in line to succeed him. Truman believed that his successor should be an elected official with deep political experience, and he successfully lobbied Congress to enact his position into law. But the statute needs serious retooling.

The bumping mechanism must be radically truncated. Whoever is acting president 48 hours after the blast should stay acting president (with impeachment as a last resort).

The line of succession should be revised. Truman was right to prefer seasoned political leaders to cabinet officers, but there are two problems with the current designations. Although the speaker of the House is almost invariably a leading politician, the central figures in today's Senate are the majority and minority leaders. The statute should take this into account, and replace the president pro tem with a Senate official whose leadership skills have gained the support of his colleagues.

My next change may prove more controversial, but it shouldn't be. By putting the speaker first in line after the vice president,

the current statute assures us that a skilled politician will assume the presidency, but he may well be a member of the opposing political party. This is a mistake: Terrorists should not be allowed to overrule the decision of America's voters and generate a sharp swing in public policy. A statutory tweak will suffice to assure that the party that won the last presidential election remains in control.

The new succession statute should instruct each president, at the start of each congressional session, to designate either the speaker or the minority leader as the successor to the vice president; and the president should have the same privilege when it comes to choosing between the Senate majority and minority leaders. He will, of course, choose the leader of his political party, assuring policy continuity at a time of crisis.



We run into serious trouble only if some unspeakable disaster eliminates the leaders of both houses, as well as the secretaries of state and the treasury. This puts the secretary of defense next in line, since the War Department was created immediately after the Treasury Department when George Washington set up the executive branch. This accident of history should no longer rule us. The principle of checks and balances is far more important, and it suggests that the defense secretary should be placed at the bottom of the list of Cabinet officers. As civilian chief of the military, he will inevitably—and justifiably—have a large role in emergency decision making, but he should be obliged to make his case to an acting president whose past experience has exposed him to different perspectives. If the defense secretary is made president and promotes his deputy to his old job, their conversations in the executive suite will be dangerously parochial—one Pentagon guy talking to another. The succession statute should skip to the next officer in line, the attorney general.

We then confront a problem. The attorney general, as well as the secretaries of state and treasury, are obliged to take a large view of national problems, and as a consequence, these officers

regularly become prominent figures in American political life. But the other departmental secretaries have more parochial interests (Interior, Transportation), and are typically unknown to the general public. It would be terrible if any of these worthies were called upon to exercise presidential power.

My colleague Akhil Amar has suggested the creation of a new position—minister without portfolio—whose sole function would be to serve as acting president in the case of a dreadful decapitation. Once confirmed by the Senate, the minister would live outside Washington, D.C., and receive regular briefings that would enable him to act effectively if disaster struck. Amar hopes that the president would appoint a retired senior statesman—a George Mitchell, a Colin Powell—to this post and give the country a figure in whom it has confidence at its hour of need. The danger, of course, is that the president could use the appointment to score points with a particular interest group or to reward a crony. And there is always the risk that the senior statesman will suffer a sudden decline in vigor before he is suddenly placed in command.

We should use this device only as a last resort, when a terrorist attack has taken out all six of the officials at the top of our

This is not the worst of it. The entire two-wave cycle—first interim, then permanent, appointments—threatens two great constitutional values. The first is judicial independence. The interim appointees will be on probation at a time when they will be confronting crucial constitutional problems. If the interim justices exercise their oversight powers with vigor, they may easily antagonize key politicians on Capitol Hill, jeopardizing their future careers on the Supreme Court. If they roll over and rubber-stamp, constitutional safeguards will crumble, with long-lasting consequences.

There is a second big problem. Ordinarily, the Supreme Court's membership turns over slowly—over the past half-century, a position has opened up about every three years, on average. This all-too-deliberate pace is getting to be a problem, creating the prospect of a Supreme Court that has lost touch with its many publics. But the decapitation scenario promises something worse: A problematic acting president, together with a Senate—composed, remember, of gubernatorial appointees—makes a series of lifetime appointments that will decisively shape constitutional law for decades. Even if the acting president contents himself with interim appointments and waits for an elected

We need a new position—minister without portfolio—whose sole function would be to serve as acting president in the case of a dreadful decapitation.

lineup. Whatever the differences between the speaker of the House and the attorney general, all of them are wielding serious power on a day-to-day basis—and you don't stay in this position unless you are in the prime of your political life. But if it's a choice between Amar's minister and, say, the secretary of agriculture, I go with the minister.

Finally, the acting president should only serve until the next regularly scheduled biennial election: In my scenario, he would serve through 2010, not through 2012. This will assure the earliest feasible return of a president with the explicit backing of the American people. This change in the calendar might readily be accomplished without a formal constitutional amendment—indeed, for the first 150 years of American history, there was a statute on the books that did provide for a special election in cases when both the presidency and vice presidency had become vacant. We should renew this tradition.

THE SUPREME COURT

The decapitation of the Supreme Court will predictably generate two sequential responses—both terrible, but only one suggested by my earlier scenario. Recall that my acting president, on the first day of the attack, exercised his constitutional authority to refill the Supreme Court with recess appointments valid until the end of the congressional session. This would set the stage, however, for a series of confirmation struggles over permanent appointments. The entire affair will be a giant distraction during a tragic period, diverting the president, the Senate, and the country from many pressing matters.

Senate to come to Washington, the country will still be reeling from the tragedy. This is hardly a propitious moment for selecting all nine justices, freezing the doctrinal orthodoxy of the day into a rigid pattern for 30 or 40 years.

We confront a paradox—loss of judicial independence over the short run, excessive rigidity over the long run. This is a recipe for trouble, especially in a country that depends so heavily on the Supreme Court in its governing arrangements. Once again, it won't be necessary to change the Constitution in order to get us out of this hole. A statute will be enough, and here is what it should say: If the Supreme Court is deprived of its quorum, some of the chief judges of the courts of appeal should immediately be reassigned to the high court to serve as justices. The reassignment would take place through a lottery: There are 12 regular courts of appeal; the names of each chief judge would be dropped into a hat, and the identity of the new justices will be called out after a random draw. Judges become chief of their appellate circuits through seniority, and they must resign this position when they reach 70. By promoting them to the Supreme Court, we are guaranteed experienced jurists whose powers have not yet been dulled by great age—and who will not sit on the court for 30 or 40 years.

Randomized selection will minimize the political spin—most judges on a particular circuit might be appointed by Democratic presidents, but this won't prevent the chief judge from being a Republican if seniority marks him out, and vice versa. Finally, the replacements won't occupy their seats for extremely long periods. Chief judges of the appeals courts are almost

invariably in their middle or late 60s, and even in this day of medical miracles, the grim reaper can't be delayed indefinitely. The statute, however, might go further and require the chief judges to return to their circuit courts on a staggered schedule—guaranteeing the president and Senate at least one appointment every two years, say, if a vacancy doesn't otherwise arise through death or resignation.

But we are now descending into (important) details, and it is more crucial to see how the basic proposal resolves the egregious difficulties of the status quo. Rather than diverting the president and the Senate into a protracted battle over the Supreme Court at a time of emergency, the statute renews the court immediately with the nation's surviving senior jurists, without any partisanship involved. And it immediately assures judicial independence—in contrast to recess appointments by the president, the tenure of the new justices won't depend on pleasing the powers-that-be in the White House and the Senate. At the same time, the happenstance of a successful terrorist assault won't freeze constitutional jurisprudence for 30 or 40 years: The Supreme Court will evolve with the changing temper of public opinion. Is there any fair question that this is *a lot* better than we can hope from the status quo?

THE HOUSE

This problem requires a little more institutional imagination. The Constitution says "The House of Representatives shall be composed of Members chosen every second Year *by the People* of the several States" (emphasis mine). These words inscribe a constitutional understanding that is deeply engraved on the national consciousness: Membership in the "People's House" is, and should be, based on a direct connection between voters and representatives. No formal amendment challenging this idea has a ghost of a chance, and I, myself, am firmly committed to retaining a direct linkage between the House and the people.

Nevertheless, there is a way to maintain existing constitutional commitments and still get the House back in business within days of a devastating attack: Congress should create a new office of vice representative, who will serve in Congress if the district's principal representative is either killed or disabled in a catastrophic attack. Henceforth, the major political parties would regularly nominate a two-person "ticket" in each House race, and voters would cast ballots for *both* positions at each election, enabling the vice representative to take over immediately in the event of a decapitating strike.

This system transparently complies with the constitutional text, since both representative and vice representative will be "chosen every second Year by the People." Rather than violating this command, Congress would be complying with its literal terms. It is simply changing the mode of compliance—replacing the current system of special elections with a more regularized mechanism for filling potential vacancies in advance.

My proposal may be novel, but it conforms to the Founders' decision to create the position of the vice president to serve as an immediate stand-in for the president. The framers could have dispensed with the vice presidency entirely, designating some interim figure, like the secretary of state, to call a special

election to fill the office. But the death of the president seemed sufficiently likely, and sufficiently disturbing, to warrant the selection of a replacement in advance. Although they didn't give the vice president very much to do, they thought it was important to have him hanging around.

During the 18th century, the technology for a massive sneak attack wasn't available—nobody thought that the House, like the presidency, could be wiped out in a single blow. So the framers didn't seriously consider the creation of vice representatives on analogy with the vice president. But there is no reason to suspect that they would have objected as a matter of principle. So far as the Constitution is concerned, Congress has ample authority to pass a statute creating the office of vice representative as "necessary and proper" for assuring the continuing existence of government in the United States.

Turning to policy, the new system has its share of problems. For starters, the House candidate at the top of the ticket won't be interested in giving a platform to somebody with sufficient stature to launch a primary challenge during the next election cycle. Nevertheless, he won't choose an obvious incompetent. As presidential candidates have learned, the selection of a bad vice presidential nominee starts the campaign off on a very bad note—giving opponents a field day in the press. This will restrain the selection of a spouse or a child, or a notorious fool. While a House of vice representatives will contain its share of loyal hacks, so will the makeshift Senate dominated by interim members selected by state governors.

Not a pretty picture, I confess, but surely a lot less grim than a scene in which the acting president must rule by decree, or a rump House sits in defiance of bitter challenges to its constitutional legitimacy.

There will always be one disadvantage to the office of "emergency vice representative." It will serve as a constant reminder of the real possibility of a devastating terrorist attack and provide a demoralizing undertone to ordinary politics. But demoralizing or not, the truth is that we do face a low-level but palpable risk. Rather than burying our heads in the sand, isn't it better to deal with the truth in a sober fashion, and in a way that seeks best to sustain our democratic ideals?

THERE ARE TWO KINDS OF EMERGENCY: ONE IS CREATED by a terrorist attack; another when the attack paralyzes our government. The first kind is almost inevitable—it will be a miracle if we can stop the burgeoning traffic in increasingly powerful weapons, and I don't believe in miracles. But the second is entirely of our own making. It is the product of an ostrich-like refusal to confront the obvious inadequacies of our present arrangements. This is a matter on which all Americans should agree: However much we hope that our precautions will prove unnecessary, we should act now to create an adequate emergency Constitution. **TAP**

Bruce Ackerman is Sterling Professor of Law and Political Science at Yale. This essay is adapted from his new book, Before the Next Attack: Preserving Civil Liberties in An Age of Terrorism, to be published by Yale University Press in March.

Rick Santorum, the Senate GOP's new point man on ethics, wrote *It Takes a Family* as counterpoint to *It Takes a Village*. But a review of his PAC expenditures—and a probe into his, ah, interesting mortgage—show that in his case, it takes a few hundred thousand dollars from lobbyists.

With a Little Help From His Friends



BY WILL BUNCH

ILLUSTRATION BY PETER AND MARIA HOEY

"In far too many families with young children, both parents are working, when, if they really took an honest look at the budget, they might find they don't both need to."

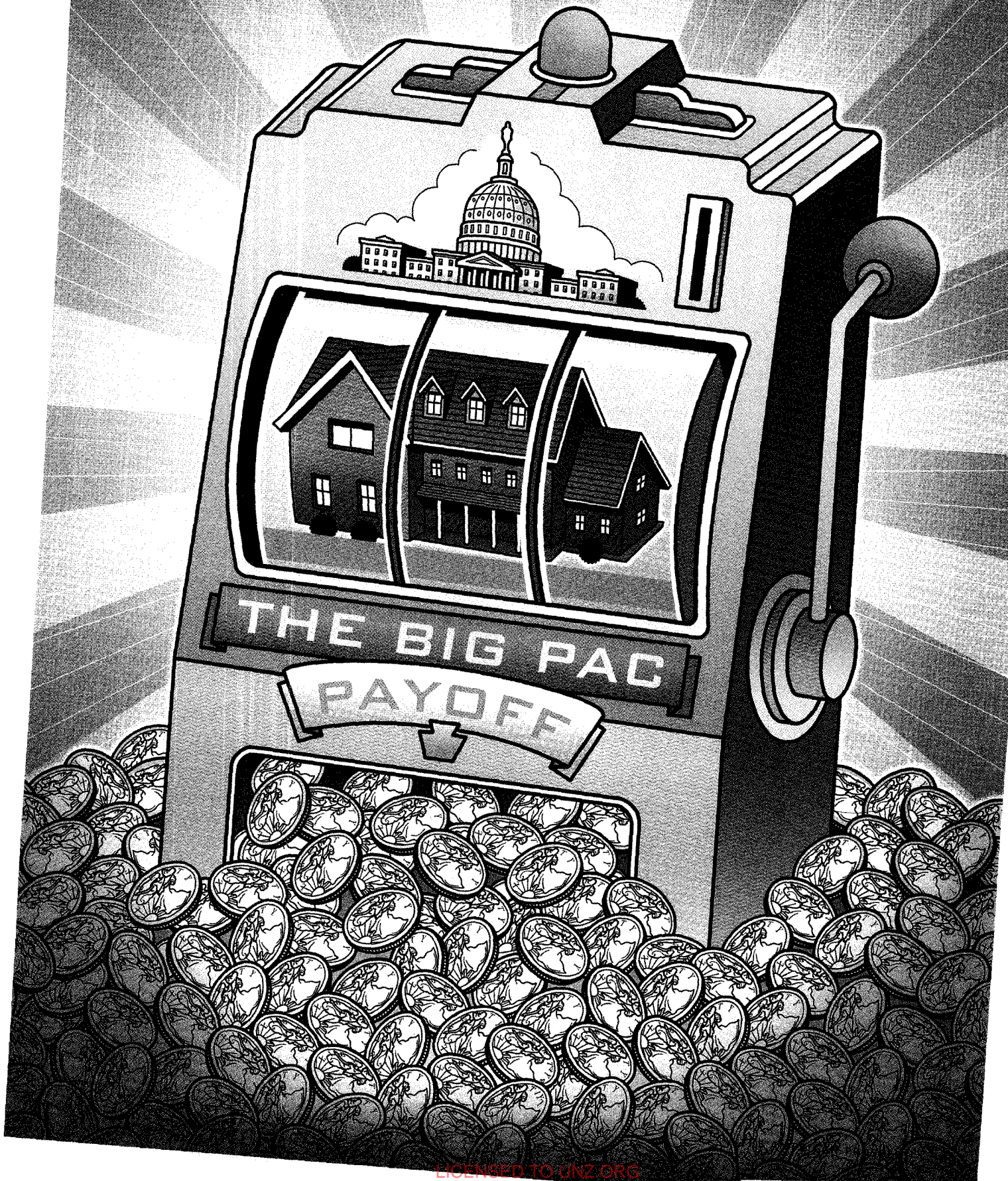
— U.S. SENATOR RICK SANTORUM, in his 2005 book, *It Takes a Family: Conservatism and the Common Good*

THE ESTATES AT SHENSTONE FARM SPRAWL OVER 500 ACRES of steeply rolling, barren hillside, at the point where northern Virginia's traffic-clogged suburbs finally surrender to the foothills of the Blue Ridge Mountains. On an unseasonably warm January day, this former horse farm is shrouded in fog so dense that a visitor could imagine a band of gray-clad rebel soldiers emerging from these hilltops in the heart of Civil War country.

Instead, what slowly takes shape from the gloaming are well over 100 McMansions, with more on the way—massive brick structures jutting out like solitary fortresses, each surrounded by roughly four acres of treeless, lunar-like landscape, with three-car garages and scone-topped brick monument pillars at the foot of each long driveway. Most sport pricey wood playsets in the backyard.

It is here, some 43 miles by car and a world away from Capitol Hill, that Pennsylvania's junior U.S. senator, Rick Santorum, and his wife, Karen, bought a home on November 14, 2001, for \$643,361 (now assessed by Loudoun County at \$757,000). It is here that the most outspoken social conservative in the Senate is raising his six children in the manner he described in his book last year, which caused so much controversy back in the state where he is seeking a third term this fall. And it is here that Santorum departs most mornings for his newest mission: crafting a package of Senate ethics reforms aimed at removing the stain of the Jack Abramoff lobbying scandal.

The Santorums bought their oversized Shenstone "estate" even though his financial disclosure forms since 2001 have shown little family income beyond his Senate



salary, now \$162,100, and he admits that life hasn't been financially easy. The senator made a startling remark to *The New York Times Magazine* last spring: "We live paycheck to paycheck, absolutely." But he explained that his parents help out. "They're by no means wealthy—they're two retired VA [Veterans Administration] employees—but they'll send a check every now and then," he said.

The *Prospect* decided to heed Santorum's advice by taking "an honest look at the family budget"—his family budget. What we found is that Santorum's exurban lifestyle is financed in ways that aren't available to the average voter back home in Pennsylvania—namely a political action committee that lists payments for such unorthodox items as dozens of trips to the Starbucks in Leesburg, a number of stops at fast-food joints, and purchases at Target, Wal-Mart, and a Giant supermarket in northern Virginia. Although a Santorum aide defends those charges as legitimate political costs, good-government experts say the expenditures are at best unconventional, and at worst a possible violation of Senate rules, and the purchases appear to be unorthodox when compared with other senators' filings. Santorum's PAC—a "leadership PAC," whose purpose is to dispense money to other Republican candidates—used just 18.1 percent of its money to that end over a recent five-year period, a lower number than other leadership PACs of top senators from both parties.

These facts may well raise questions in Pennsylvanians' minds about how the senator is conducting their business in Washington. But it is Santorum's Virginia home that raises the hardest questions for the third-ranking Senate Republican.

INITIALLY, ACCORDING TO LOUDOUN COUNTY PROPERTY records, the purchase was financed with a \$405,000 mortgage from a conventional lender, Westminster Mortgage Company. But a year later, the couple refinanced for \$500,000. That was not unusual in the fall of 2002, when many homeowners were refinancing to take advantage of plunging interest rates, while also cashing in on the rising equity in their homes. What was curious was the source of the increased mortgage. It was a new private bank catering to "affluent investors and institutions"—whose officers have contributed \$24,000 to Santorum's political action committees and re-election campaign—called Philadelphia Trust Company.

Rick and Karen Santorum do not appear to fit the profile of customers to whom the financial institution would normally issue a loan of any kind. According to information currently posted on Philadelphia Trust's Web site, banking services "are offered at no additional charge to our clients" and "are available only to investment advisory clients whose portfolios we manage, oversee or administer. Interest rates on loans and deposits are competitive. Loan payments will be customized to match each client's specific needs. Approved loans will be collateralized by your investment portfolio."

Santorum's financial disclosure forms filed with the clerk of the Senate show that he has never maintained an investment portfolio with Philadelphia Trust. For that matter, the senator would hardly fit the profile of the "affluent investor" that the Philadelphia bank seeks—namely, people with investment assets

of at least \$250,000. On his 2002 disclosure form, Santorum listed liquid assets, primarily retirement accounts and life insurance, in a range no greater than \$140,000.

Santorum's campaign refused to disclose any specific information about the loan, and neither would officials from Philadelphia Trust. Bank Chairman George Marlin claimed that discussing any customer's transaction would violate not only banking privacy laws but also, curiously, the USA PATRIOT Act. A bank director, Karen Iacovelli, who has a background in public relations, also refused to answer any questions in detail. Asked whether Philadelphia Trust does any loan business with non-investment clients, she said, "Yes and no—it's a judgment call." Michael Crofton, the CEO of Philadelphia Trust, did not return three phone messages.

Neither Santorum nor the bank would disclose the exact interest rate, although a campaign aide called it "market-driven." Nor would either side say whether the Santorums have paid any fees or points, although Philadelphia Trust's Web site also states that "[t]here are no fees or points on loan transactions." The 12-page deed on file in the Loudoun County courthouse does not provide much information about the loan, although it does state that the term is just five years, with repayment of the \$500,000 due by November 1, 2007. That would be 11 months after the end of Santorum's current six-year Senate term.

Founded in late 1998, Philadelphia Trust is a small institution led by financiers who are clearly friendly to Santorum. CEO Crofton has been a significant political supporter of the senator. He and his wife Margaret have given \$8,500 to America's Foundation, a leadership PAC controlled by Santorum, and another \$4,500 to the senator's campaign fund. Altogether, executives and directors of Philadelphia Trust have donated \$24,000 to the two committees. Among those donors is Marlin—a former Conservative Party candidate for mayor of New York City.

Philadelphia Trust has not been immune to political controversy. About two years ago, federal prosecutors sought records of the trust's dealings with the city of Philadelphia as part of a sweeping municipal corruption probe. Coming under scrutiny by law enforcement was a former Philadelphia Trust managing director, Robert Feldman, a Democratic fund-raiser for Mayor John Street, former New Jersey Governor James McGreevey—and state Treasurer Bob Casey Jr., Santorum's likely 2006 election foe. Neither Feldman nor Philadelphia Trust was ever charged with a crime. At the time, the bank managed more than \$500 million in Pennsylvania state funds and a smaller amount of Philadelphia city pension-fund assets.

While bank executives and directors have donated to Santorum's campaign or his political fund since the firm's founding in late 1998, and Crofton is the chairman of a charity run by Santorum, there is no evidence that the senator—who sits on the Senate Banking Committee—took any official actions on its behalf.

But government ethics experts said that even if Santorum didn't take any action on Philadelphia Trust's behalf, the mortgage deal carries the appearance of special treatment, which would violate the Senate ethics rules that Santorum is now charged with reforming. "Anytime he gets something that a reg-



Livin' Large: The Santorum homestead in Leesburg; the Starbucks and Giant supermarket nearby

ular person couldn't get, that's an improper gift," says Melanie Sloan, a former federal prosecutor who now heads the Washington-based Citizens for Responsibility and Ethics in Washington (CREW). Sloan said the senator's unconventional mortgage is the latest in a series of actions—including his role in the so-called K Street Project to place Republicans in lucrative lobbying jobs—that show "he's seriously ethically challenged."

To test whether Santorum may have gotten a favor, the *Prospect* called Philadelphia Trust to inquire about obtaining an individual mortgage, and reached a bank employee who identified herself as Barbara Todd. "We don't have, *per se*, mortgages only—we're an investment company," she explained. Asked further about whether the bank makes loans, she said: "We do, once you're a client on the investment side of the business."

"Not to the general public, only to investment clients?"
"Correct."

A spokeswoman for the Santorum campaign, Virginia Davis, responded by e-mail to a series of written questions about the loan without fully answering them. "Senator Santorum and his wife, who is an attorney and a nurse, applied for the [Philadelphia Trust] mortgage using the standard application process that Americans must go through when applying for a mortgage and received a market-driven rate for their second home in the Washington, D.C., area to house them and their six children when the Senate is in session," she wrote.

WHEN SANTORUM FIRST RAN AGAINST INCUMBENT House Democrat Doug Walgren in 1990, he released an attack ad that drew the attention of *Roll Call*, the Capitol Hill weekly: "Strange music plays while a picture of an attractive white house is shown. The announcer says, 'There's something strange about this house.' The reason is because Walgren lives in McLean, which is 'the wealthiest area of Virginia' rather than his suburban district. 'Maybe that's why he voted for a pay raise seven times,' the announcer argues."

But in 1995, just after winning election to the Senate (and thus

five years before he would have to face Pennsylvania voters again), the couple purchased a \$292,000 house in Herndon, Virginia. "I made the pledge that I would live in my district as a congressman, and I did," Santorum said at the time. "The Senate is a very different place from the House." For two years he didn't even own a home in Pennsylvania, but in 1997 bought a small house in Penn Hills—in the Pittsburgh area, next door to his wife's parents—for \$87,800.

Around the same time that the couple became Virginia homeowners, Karen Santorum entered into an unusual working arrangement with the Pittsburgh political consulting firm that has provided all of her husband's media work. From 1995 through 1998, Brabender Cox—the company that handled nearly \$10 million in media buys for his two Senate campaigns—paid a retainer to the senator's wife. John Brabender, a firm principal who is godfather to one of the couple's children, told reporters that he paid her roughly \$4,000 a month for "client development," although the exact amount was never disclosed.

Karen Santorum has earned other income since she began raising and homeschooling the couple's children. She has authored two books: *Everyday Graces: A Child's Book of Good Manners*, published by the Intercollegiate Studies Institute, a conservative think tank based in Delaware, and *Letters to Gabriel: The True Story of Gabriel Michael Santorum*, the couple's still-born baby, published by ccc of America. She received a \$10,000 advance in 2002 for the second book. Santorum reportedly received \$20,000 in advances for *It Takes a Family*.

Meanwhile, the couple's family and financial needs grew. They moved up in the housing market again right after the 2000 election, when Santorum won a second six-year term in the Senate by defeating pro-life, pro-gun western-Pennsylvania Democrat Ron Klink. In 2001, the Santorums sold the Herndon home for \$429,000 and bought the newly built house at the Estates at Shenstone Farm in Leesburg for \$643,361 on November 14 of that year. The refinancing through Philadelphia Trust happened the next year.

AS PENNSYLVANIA VOTERS KNOW, THE SENATOR HAS endured enormous controversy over his residence in Penn Hills. The Santorums' niece lives in the tiny two-bedroom home—valued at \$106,000—that the senator claims as his legal and voting residence. As previously reported, the Penn Hills school district said that it paid more than \$67,000 for the cyber-schooling of Santorum's children down in Virginia, until the arrangement was revealed in late 2004. He said he was entitled to the schooling because he pays property taxes there.

But education funded by taxpayers two states away apparently isn't the only perk of membership in the U.S. Senate. According to one expert, Santorum appears to reap personal benefits from America's Foundation, the so-called leadership PAC controlled by Santorum, which has raised some \$5 million from wealthy donors and business PACs over the last five years. The stated purpose of America's Foundation is to support other GOP candidates, but the *Prospect* found that the committee spends considerably less on direct candidate aid than comparable PACs, and considerably more on operating expenses—declaring hundreds of small- to medium-sized meals and purchases by Santorum or his political staff to be “campaign-related.”

Since the beginning of Santorum's term in 2001, America's Foundation has paid for some 66 trips to Starbucks—almost all in Santorum's hometown of Leesburg—and close to 100 small purchases from another Washington area coffee vendor, along with purchases at Arby's, Burger King, Wendy's, Ben and Jerry's, and a vast array of retail and food outlets. Santorum spokeswoman Davis said that every listed expense was related to the PAC's mission, including “routine expenses such as office supplies including furniture, travel for staff, meals, and grocery items for various functions such as fund-raisers and planning meetings.”

However, a comparison to five other senators' leadership PAC expenses shows that those PACs do not list expenditures on items such as convenience stores or coffee shops, with a couple of exceptions for out-of-state travel. Different leadership PACs maintain records differently, but America's Foundation appeared to spend more heavily on credit-card payments, for example, than similar PACs. The \$463,378 spent by Santorum's PAC on credit-card payments from 2001 through 2005 constituted 8.6 percent of all cash taken in, while comparable numbers for Kentucky's Mitch McConnell, his partner in the GOP Senate leadership, were \$29,524 and 1.6 percent. All this leads experts to say that those expenditures appear highly unusual.

“These are very questionable transactions, given that the donors to this leadership PAC were trying to work on ‘party building,’” says Alex Knott, political director for the Center for Public Integrity, a leading Washington-based good-government group. “They were probably not aware that the funds were being spent at convenience stores and coffee houses.” CREW's Sloan said some charges appear to be for personal use, which would violate Senate ethics rules. “Let them explain why an ice-cream cone at Ben and Jerry's is a campaign expense,” she says.

So-called leadership PACs were originally developed as a way for the ranking members in the House and Senate to build support from new and junior members by giving extra money to their campaigns. Over time, however, even members of Congress

who aren't in leadership founded these PACs, and it isn't hard to understand why. On the giving side, leadership PACs are a way for big-money givers inside the Beltway to offer support beyond the current limits, which in the current 2006 cycle are \$4,200 for an individual (\$2,100 each for the primary and general election) and \$10,000 for a PAC. On the spending side, there would seem to be few restrictions except that a leadership PAC can't directly aid the campaign of the politician with which it is connected.

In fact, while America's Foundation has raked in millions from Washington lobbyists and big-business PACs, it has doled out just a fraction of that money on the stated purpose of Santorum's committee, which is supporting other candidates. From the start of 2001 until late 2005, according to its disclosure forms, America's Foundation raised a whopping \$5,363,735, but spent just \$967,632 on other candidates or political committees—just 18.1 percent. Santorum spokeswoman Davis maintained that America's Foundation “assisted other candidates running for office to the tune of \$3,025,331 since 2001,” although she did not explain how that calculation was reached, and the forms clearly show the smaller number.

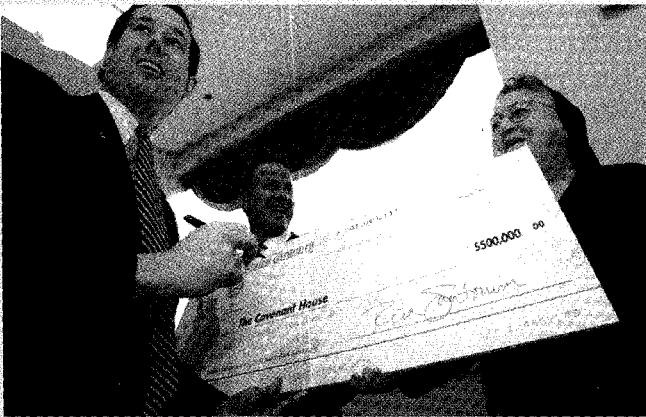
Again, Santorum's number compares unfavorably to those of most other senators in leadership positions. For example, Democratic Minority Whip Dick Durbin's figure for the same period was 65 percent. McConnell's was 47.5 percent. House Minority Leader Roy Blunt's was 54 percent. Democratic Senate Minority Leader Harry Reid's was 23.1 percent. Senate Majority Leader Bill Frist was in Santorum's ballpark, at 20.5 percent, but Santorum was the lowest of all those reviewed.

The bulk of the PAC money was spent on a broad category called “other federal expenditures.” Those costs include direct mailings and fund-raising commissions. A company called Capitol Resources Group—located in the Philadelphia suburb of West Conshohocken and run by Santorum's finance chief, Rob Bickhart—has received monthly rent, expenses, and management fees that generally came to \$10,000 every month. It also pays regularly for Internet and mobile-phone service. But other expenditures by America's Foundation are less conventional.

The PAC has paid for hundreds of meals over a five-year period. Some of those were at expensive, upscale restaurants like the Capital Grille restaurants in Philadelphia and in Washington, D.C. But what jumps out from the PAC's thousands of pages of reports are all the small meals.

Arby's, the fast-food chain specializing in roast-beef sandwiches, has been a particular favorite. Eleven Arby's meals, totaling \$118.25, were charged to the PAC—eight of them in Dillsburg, Pennsylvania, a small town on U.S. 15 south of Harrisburg. The PAC also charged four meals at Burger King, totaling \$50.36—three of these in Virginia or Maryland. Other meals were charged at fast-food eateries such as Wendy's, Boston Market, Sbarro, and Papa John's pizza.

America's Foundation also paid for numerous pizza and Chinese-food meals in northern Virginia and Washington, D.C. For example, on October 16, 2003, the PAC paid for two meals at Giovanni's New York Pizzeria in Leesburg, for \$10.53 and \$11.34, and it charged several meals at Great Wall Express in Alexan-



Checks and Imbalances: Santorum's foundation has been stingy with grants.

Sour Charity

EVER CONSCIOUS OF POLITICAL fashion, Rick Santorum wanted to demonstrate that he, too, was a "compassionate conservative" in 2000, when the Bush campaign popularized the phrase. Santorum helped sponsor the Good Neighbor Initiative, a fund-raising drive that netted \$700,000, mostly from big corporations, to do good works in Philadelphia.

"When I found out the Republican convention was coming to Philadelphia, I thought: 'Wouldn't it be a great thing to leave something positive behind other than a bunch of parties and a bunch of garbage?'" Santorum told the *Philadelphia Inquirer*.

In 2001, he launched the Operation Good Neighbor Foundation. The charity, which seeks to award money to faith-based groups and other organizations that combat poverty and social ills like teen pregnancy, has a Web page loaded

with photos of a smiling Santorum, posing with oversized checks and leaders of community groups. So far, according to the site, the Senator's charity has doled out \$474,000.

But public records show that the group has raised considerably more than that since its inception in 2001.

A review of federal tax returns filed by the foundation for 2001, 2002, and 2003 shows that the charity spent just 35.9 percent of the nearly \$1 million raised on its charitable grants, while spending 56.5 percent on expenses like salaries, fund-raising commissions, travel, conference costs, and rent. Charity experts say that charitable groups should spend at least 75 percent of their money on program grants, and that donors should beware of organizations that spend as little as Santorum's has.

"The majority of organizations are able to meet that 75

percent figure," says Sandra Miniutti of Charity Navigator, a watchdog group. Without addressing Santorum's charity specifically, she noted that nonprofits spending in the range of just one-third on programs are "extremely inefficient."

Moreover, the foundation is not registered with the Pennsylvania Department of State. A spokeswoman for the state agency said that any charity that solicits and raises more than \$25,000 in Pennsylvania is required by law to register. Records included on the foundation's 2002 tax filing list \$94,000 in donations from sources in the state. State law says that violators of the registration law run the risk of civil penalties and possible legal action by the state.

The list of 2002 donors—displayed on a Web page marked "not open to public inspection"—includes several major donors to Santorum's political campaign. Most notable is Philadelphia Trust Company, the same private bank that refinanced Santorum's Virginia home in 2002, which gave \$10,000. The CEO of Philadelphia Trust, Michael Crofton, is chairman of the charity's board of advisers. The foundation also raised \$25,000 from the PMA Foundation, the charitable arm of a risk-management firm in suburban Philadelphia; \$25,000 from the suburban Philadelphia development firm Preferred Real Estate; and \$10,000 from J. Brian

O'Neill, the brother of that firm's founder and himself a developer. The charity also received \$10,000 from the Keystone Sanitary Landfill, owned by Louis DeNaples, a controversial Scranton businessman who is fending off published allegations that he associates with organized-crime figures.

The donor list isn't the only overlap between Santorum's charity and his political operation. The charity's treasurer is Barbara Bonfiglio—who works out of the Washington, D.C., lobbying firm of Williams and Jensen and serves as treasurer of the senator's leadership PAC, America's Foundation. Operation Good Neighbor also paid \$50,000 in total salary in 2002 and 2003 to Rob Bickhart, Santorum's finance director, who is also the charity's executive director. It has paid \$118,710 in fund-raising fees to Maria Diesel of Chester County, Pennsylvania, who also raises money for Santorum's political efforts.

Gary Ruskin of the Congressional Accountability Project, a good-government group, questioned why Operation Good Neighbor would hire lobbyists and political operatives instead of charity professionals. "It looks like another pocket to fill," Ruskin said, adding: "Senator Santorum is obviously a man with many pockets."

Santorum's office did not comment.

—W.B.

dria, Virginia, one for just \$5.74. Unsurprisingly, a number of the meals charged to America's Foundation were for larger amounts. For example, a PAC credit-card payment on November 9, 2001, paid for meals of \$175.05 at Smith and Wollensky's in Philadelphia as well as \$29 at TGIFriday's in Pittsburgh and \$6 at the Iron City Saloon.

But the pages of federal records show that no charge was too

small for America's Foundation: not the \$4.44 it paid to a Sheetz Service Station in Mt. Jackson, Virginia, in July 2002; not the \$3.71 it paid at Goodnoe Farms, a popular Bucks County ice cream stop, in May 2004; not the \$4.48 at a Ben & Jerry's in August 2002; not the \$5.26 at a Wawa convenience store in June 2003; and not the \$2.49 at an Auntie Anne's pretzel store in June 2004. On five occasions, charges—totaling \$338.87—were made

at Giant Foods supermarkets in Leesburg and Burke, Virginia.

The records also display an unusual penchant for coffee. America's Foundation paid 66 times for visits to Starbucks, all but a couple of them at the Leesburg location, which is a popular local hangout on the town's main shopping drag, with a large wood-burning stove in its main lounge area. A Starbucks barista said he has seen Santorum there on a couple of occasions, adding: "We got a lot of celebrities ... Oliver North comes here all the time."

The total Starbucks charges since 2001 come to \$558.65. But that is not America's Foundation's favorite coffee stop. Since the current term began, the fund has also paid for 94 visits to coffee shops owned by HMSHost of Bethesda, Maryland—for a total spending of \$380. Other visits to both the Leesburg Starbucks and HMSHost were also paid for by Santorum's 2006 campaign, but in much smaller amounts.

America's Foundation doesn't spend money on just food. Its records show expenditures at an all-star lineup of American retailers. Some of the purchases are at traditional office stores that have become a mainstay of modern political campaigns, like Staples and OfficeMax. A \$273.48 charge at the Restoration Hardware store in Ardmore, Pennsylvania, is listed under the previously unknown campaign category of "repairs."

Other entries include \$325.99 at Target and \$102.28 at Wal-Mart. A \$273.48 charge at Restoration Hardware is listed under the previously unknown category of "repairs."

Other entries for "office supplies" or "PAC fund-raising expenses" include \$325.99 at the Target store in Leesburg in September 2005 and \$102.28 at a Virginia Wal-Mart in June 2002. These are in addition to charges at Overstock.com; K-Mart; cvs and Duane Reade drug stores; Barnes & Noble and B. Dalton bookstores; and a RadioShack and Circuit City in northern Virginia. The PAC office expenses were incurred even though America's Foundation lists its official address at someone else's office: the Washington headquarters of a major lobbying firm, Williams and Jensen, which employs America's Foundation's treasurer, Barbara Bonfiglio.

Although America's Foundation paid out tens of thousands of dollars in itemized travel expenses, including chartered jets and commercial air tickets, Amtrak tickets, luxury hotel stays, parking and, of course, meals, it also made unitemized travel expense payments directly to Santorum on a frequent basis. The total of these payments over the five years of the senator's current term is \$48,188. These payments were questioned at one point by the Federal Election Commission and defended in a campaign filing as "travel expenses that the senator incurred on behalf of America's Foundation and were reimbursed at the exact amounts he was charged at the time the travel was incurred." Again, other leadership PACs showed far fewer direct reimbursements to the office holder.

Larry Noble, executive director of the Center for Responsive Politics and former top lawyer for the Federal Election Commission, said that a leadership PAC like America's Foundation "isn't supposed to be used as a slush fund or a coffee fund." But he noted that even if one could prove that the spending was for

"personal use," which would be difficult to do, he believes that probably would not violate the FEC's lax rules on the spending practices by PACs.

A recent study by the Center for Responsive Politics found that Santorum was No. 1 among all 535 members of Congress in raising money from lobbyists for his regular campaign fund, taking in \$145,946 in the first 10 months of the 2006 election cycle. Not surprisingly, Washington lobbyists were also among the major sources of the millions raised by America's Foundation. Although Jack Abramoff is one of the few big names not on the donor list, the PAC of Greenberg Traurig, the law firm where Abramoff worked until 2004, donated \$4,000 to America's Foundation in 2003. (Santorum recently said he would turn over the \$11,000 in Abramoff-related donations to charity.)

Lobbyists from another scandal-scarred lobbying firm, Alexander Strategy Group—which is under federal scrutiny in the D.C. lobbying scandal and recently shut its doors—had donated \$14,000 to America's Foundation and \$4,600 to the Santorum 2006 committee. A big chunk of that came from a one-time Santorum aide, Michael Mihalke, who later went to work for the Alexander firm, which *The New York Times* called "one of the crown jewels" of the K Street Project.

The biggest source of income for America's Foundation is industry PACs—particularly in the areas of banking, insurance, health care, and pharmaceuticals—which have given hundreds of thousands of dollars. Oddly enough, given Santorum's position as the Senate's leading social conservative, America's Foundation has raked in big dollars from gaming, tobacco, and liquor interests. Among the Santorum fund's leading donors are political action committees for R.J. Reynolds, Altria, and U.S. Tobacco Corporation. On November 2, 2004, the date that the GOP maintained control of the Congress and the White House, four U.S. tobacco executives gave \$10,000 to America's Foundation—in addition to \$6,000 in donations from the firm's PAC that same year. Earlier in October 2004, Santorum had been a key vote in a House-Senate conference committee that killed a provision allowing the Food and Drug Administration to regulate the tobacco industry. Also in the fall of 2004, America's Foundation received \$5,000 from the Anheuser-Busch PAC. That summer they received \$1,000 from the Miller Brewing PAC. In April 2005, Santorum introduced legislation that aimed to halve federal excise taxes on beer, from \$18 to \$9 a barrel for large brewers.

Santorum has not received as much gaming money as certain other members of Congress. Over the past five years, the Mashantucket Pequot Indians, who operate a casino in Connecticut, have given \$17,500 to America's Foundation (\$5,000 of that to a now defunct "non-federal" account). In 2001, according to published reports, Santorum joined with his Pennsylvania Senate colleague, Arlen Specter, to kill a measure that would have blocked the opening of a California Indian-gaming casino that was backed by a prominent Philadelphia Republican, for-

mer mayoral candidate Sam Katz. On August 16, 2001, Katz donated \$5,000 to America's Foundation.

Other America's Foundation donors who are not so well known have been closely linked to legislation sponsored or backed by Santorum. For example, there was America Foundation's huge windfall of \$45,865 from donors in Puerto Rico on December 31, 2003. Santorum had introduced the Medicare Puerto Rico Hospital Payment Parity Act of 2003 and pushed to get extra reimbursement moneys for Puerto Rico in the reform package enacted by Congress that same year. He also sponsored the Puerto Rico Medicare Reimbursement Equity Act of 2005.

Then there is the case of the \$612 million coal-to-diesel fuel plant in Schuylkill County, Pennsylvania. No one has been a bigger governmental supporter of this controversial project than Santorum, who inserted a provision in the National Energy Security Act of 2000 to allow federal funding for part of its construction costs, clearing the way in 2003 for a \$100 million Department of Energy grant to the plant's builder, Waste Management and Processors, Inc. Last year, he added a provision in the energy bill to federally guarantee loans for the plant. Waste Management and Processors CEO John Rich and his relatives have donated \$8,000 to America's Foundation and \$18,500 to Santorum's campaign fund since 2001, according to federal records. Davis, in response to an inquiry, said that none of Santorum's official actions were linked to the donations.

IT WOULD BE HARD TO IMAGINE AN AMERICAN LANDSCAPE more removed from the lush Virginia hills of Leesburg than gritty North Philadelphia, one of the poorest zip codes in Santorum's home state of Pennsylvania. Here, the Greater Exodus Baptist Church sits amid a gloomy stretch of pawnshops and fast-food restaurants, across from a Salvation Army center and atop Philly's rusty Broad Street subway line.

Inside the powder-blue walls of the century-old sanctuary, the joint is rocking. "Justice Sunday III," an event pushing Supreme Court nominee Samuel Alito on the eve of his January confirmation hearing, is about to be televised to Christian fundamentalists in churches around the country. The pulsing backbeat of a large gospel choir has the audience—evenly divided between African Americans and whites—swaying and stomping its feet. But up on stage, Rick Santorum gazes out with a wide but bemused smile; as the beat accelerates, he bobs his neck back-and-forth in slight motion. He takes a seat, literally at the right hand of the Reverend Jerry Falwell, founder of the Moral Majority.

While Santorum, still boyish-looking at age 47, may appear slightly out of place, he seems very much at home when he steps up to the pulpit. He preaches that the founding of America, right there in Philadelphia in 1776, created a kind of freedom that "is what makes America one of the most religious countries in the world, a fact at the core of the success of America in this experiment. But that freedom is at risk today because of the actions of liberal activists judges on the Supreme Court!" From one of the back pews, a listener lets out with an "Amen!"

This is the public face of Rick Santorum, the "family values" conservative prone to rash and provocative statements on hot-button social issues such as abortion and gay marriage, the face

that graced a May 2005 cover of *The New York Times Magazine* under the words, "The Believer." Most pundits expected that Santorum—facing a tough re-election battle in a state that has gone Democratic "blue" in the last four presidential elections—would drift back toward the political middle.

Instead, he has cemented his reputation as a voice of the social conservative movement with the publication of *It Takes a Family*. Published last July, Santorum's book set off sparks by linking working moms to "the influence of radical feminism," comparing abortion to slavery, and lashing out at "the weird socialization" of public schools. It echoed earlier controversies like the 2003 interview in which he essentially compared gay sex to bestiality—famously riffing on "man-on-dog sex"—and bigamy, or his comment in 2002 that it was not surprising that the Catholic priest sex-abuse scandal burst forth from the liberal bastion of Boston.

But Santorum the conservative social critic is merely the latest incarnation of a political survivor. His views on abortion were once somewhere between pro-choice and ambivalent, and in 1990 campaign literature he noted that he had "returned to my Church after a period of absence." Santorum has also written that his view on abortion was influenced by his 1988 marriage to then-law student Karen Garver. Last year, the *Philadelphia City Paper* revealed that when Garver met Santorum, she had been living with the founder of Pittsburgh's first abortion clinic.

The details of Santorum's private life have clashed with his public record on several occasions. The senator has voted for a medical malpractice bill that capped non-economic damages at \$250,000, even though in 1999 Karen Santorum had sought \$500,000 from a Virginia chiropractor for back pain and was awarded \$350,000 by a jury. (A judge reportedly later halved the award to \$175,000.)

While experts and politicians may debate the propriety of Santorum's real-estate dealings and PAC spending, one thing became clear during a recent visit to the Estates at Shenstone Farms. Very few of the development's residents can afford the bulky \$750,000-plus homes without two sources of income. Residents said that in a number of families, wives work either full time or at home; one is a part-time hairdresser.

A Santorum neighbor told the *Prospect* that she occasionally sees the senator's children outside mowing the lawn but doesn't really know the family—which is not surprising since she cares for two young kids while working full-time from her house. In the community where the Santorums chose to live, she said, "Not too many women stay at home."

And so the political chameleon has changed colors yet again, casting himself as the Senate's leading reformer. But with the November election fast approaching, Santorum is trailing Casey, his most likely Democratic opponent, by double digits in the polls. Florida pollster David Beattie has written that the 2006 election may turn on fiscally conservative, socially moderate voters with weaker partisan ties. Beattie calls them "Starbucks Republicans." At least Santorum will know where to find them. **TAP**

Will Bunch is senior writer for the Philadelphia Daily News and author of its blog, Attytodd.com.

Welfare Redux

Back in 1996, we were pessimistic about reform. We were wrong. But new rules just pushed through may confirm our worst fears.

BY CHRISTOPHER JENCKS, JOE SWINGLE, AND SCOTT WINSHIP

WHEN WELFARE REFORM PASSED IN 1996, critics (including all of us) feared a substantial increase in material hardship among single mothers and their children. We were wrong. Six years ago, after reviewing dozens of government surveys, two of us wrote in these pages that the record was neither as grim as critics had feared nor as encouraging as advocates had promised. [See Christopher Jencks and Joe Swingle, "Without a Net," *TAP*, January 2000.] The welfare rolls had been cut by almost half, material hardship had declined, and the rise in out-of-wedlock childbearing seemed to have slowed.

At that time, however, the economy was still booming and the most stringent requirements of the 1996 legislation had not yet been implemented. Skeptics therefore continued to fear that once the next recession arrived and the new law's requirements were fully implemented a lot more single mothers would start turning up in homeless shelters or would have to send their children to live with grandma.

Now the economy has been through a fairly long (though rather shallow) recession, and the requirements of the 1996 legislation are all in effect. Reviewing the evidence collected since 2000, we have found that single mothers were indeed worse off when unemployment peaked in 2003 than they had been in 2000. (Could it have been otherwise?) But single mothers were no worse off in 2003 than they had been in 1996, before welfare reform.

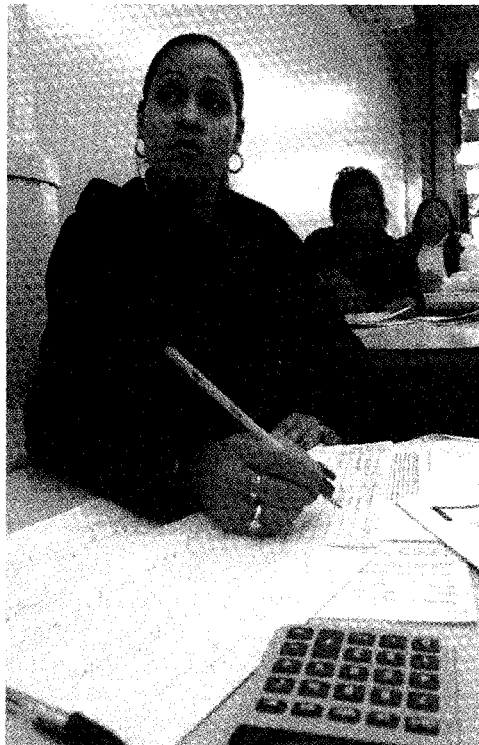
About 4.5 million families were getting welfare in 1996. Today, as chart 1 shows (see page 37), that figure has fallen by two-thirds. Because the welfare rolls have dropped so dramatically, welfare is no longer a major political issue. As far as the

public is concerned, the problem has gone away. Nonetheless, when the 1996 legislation had to be renewed in 2002, Congress was so polarized that it could not agree on what to do. With Republicans in control of Congress and the White House, the obvious solution might have been to declare welfare reform a success and leave the law unchanged. Had the three of us been in charge, the obvious solution would have been to make work-

supports more generous. But conservative Republicans wanted to make it even harder for single mothers to get welfare, and most Democrats objected.

This impasse was finally broken last fall when the Republicans incorporated their welfare proposals into the budget reconciliation agreement for 2006. This maneuver prevented a Democratic filibuster in the Senate, and the changes passed in February. The biggest change is a requirement that the number of people receiving Temporary Assistance to Needy Families (TANF) without engaging in "work-related activities" should be no more than half a state's 2005 caseload. States can meet this requirement either by putting recipients to work or pushing them off the rolls entirely. Since today's TANF recipients are mostly hard to employ, putting them to work will be difficult and expensive. Pushing them off the rolls will be cheaper and easier.

State officials' temptation to choose the cheap alternative will be exacerbated if Congress adopts the administration's recent budget proposals for the next five years. After adjusting for inflation, these proposals would reduce federal grants to the states by 8 to 13 percent over the next five years. If the economy continues to grow—a big "if"—state revenues should grow enough to cover the reductions in federal funding. But given all the competing claims on states' resources,



Work Ethic: The new law may discourage work programs.

the new federal work requirements for single mothers may well bring about the hardships that liberals have been predicting since 1996. Before turning to that possibility, however, we need to say a little more about what has happened over the past decade.

DECLINING POVERTY

Until 1996, most cash assistance for single mothers came from Aid to Families with Dependent Children (AFDC). In 1996 Congress replaced AFDC with a new program called Temporary Assistance to Needy Families. TANF established federal time limits and work requirements, and it allowed states to set requirements even more stringent than the federal ones. Several million single mothers left the welfare rolls between 1996 and 2000, and many other women who had recently become single mothers or lost their job decided not to apply for benefits or applied but were “diverted” into a job-search program. (Unlike AFDC, TANF does not give indigent mothers a “right” to welfare.)

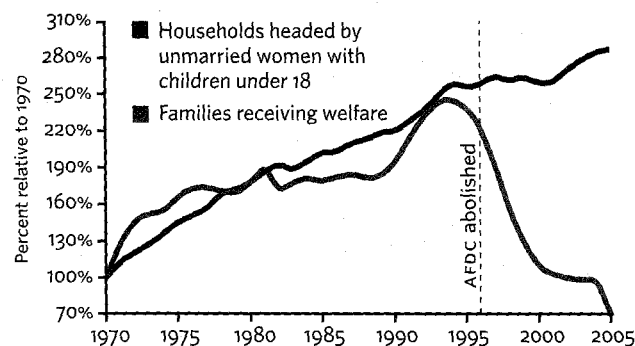
Chart 2 shows our estimates of how the poverty rate changed for single mothers. Unlike the official poverty count, our estimates subtract taxes from income and add the Earned Income Tax Credit (EITC), food stamps, and the estimated value of school lunches and housing subsidies. Our estimates are also based on household income rather than family income, so they include the income of live-in boyfriends. Finally, our estimates adjust the poverty thresholds for inflation using a slightly better price index than the one used to make the official estimates.

The red line in chart 2 shows that our measure of poverty among single mothers fell from 21 percent in 1996 to 15 percent in 2000. The rate rose again during the recession, but it was still only 17 percent when unemployment peaked in 2003. The Census Bureau has not yet released the data we need to calculate our poverty rate for 2004 but the official rate for single mothers rose slightly between 2003 and 2004, and we predict ours will do the same thing. No poverty data for 2005 will be available until next fall.

The green line in chart 2 tells a different story. It shows the percentage of single mothers with incomes less than 70 percent of the poverty line, a condition we call “severe” poverty. Instead of falling between 1996 and 2003, severe poverty rose slightly. This apparent contradiction reflects a crucial fact about the past decade. While most single mothers have more money today than their counterparts had in 1996, the poorest mothers do not. Tighter work requirements will make this problem even worse if states meet the new federal requirements by pushing families off the welfare rolls entirely.

Chart 3 helps explain why these changes occurred. The red line shows a dramatic increase in the fraction of single mothers who reported that they had worked during the previous year and that no one in their household had received money from public assistance. The poverty rate for such mothers was 7.6 percent in 1996 and 7.4 percent in 2003, so as more single mothers moved into this category the poverty rate for all single mothers fell. (Readers should bear in mind that our poverty counts include live-in boyfriends’ earnings. The poverty rate for single mothers who had to rely entirely on their own earnings would be more than 7 percent.)

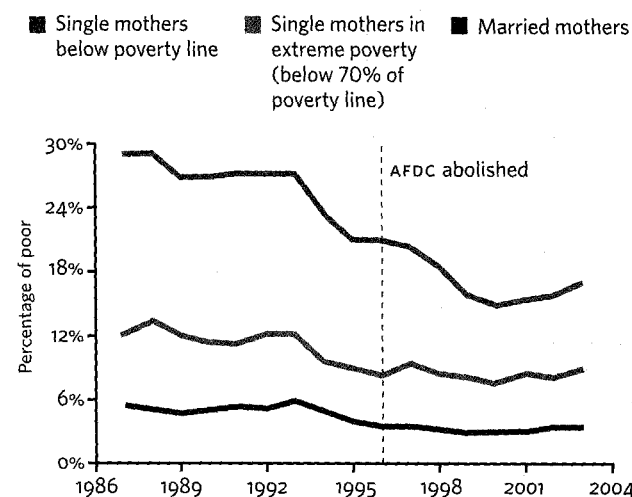
Chart 1: The number of households receiving welfare
At a 35-year low



Sources: U.S. Department of Health and Human Services and Current Population Reports

Chart 2: Poverty among single mothers

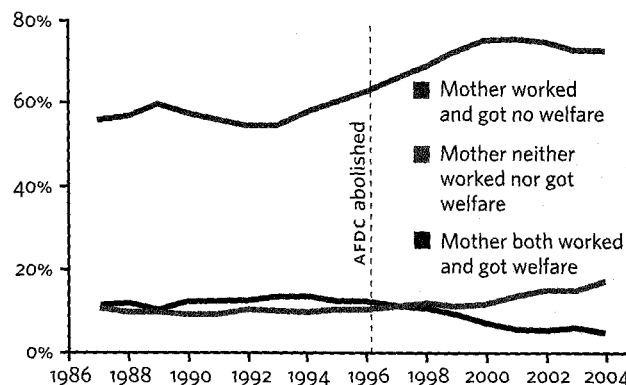
Risen slightly since 2000 but still much lower than 1996; extreme poverty slightly higher than 1996



Source: Annual March Current Population Surveys

Chart 3: Employment among single mothers

Down since 2000, but much higher than in 1996



Sources: Annual March Current Population Surveys and authors' tabulations

The green line in chart 3 shows the fraction of single mothers who reported no income during the previous year from *either* work *or* welfare. This group also grew. Fortunately, most of these mothers lived with someone else who helped pay their bills, so “only” 44 percent of them had household incomes below the poverty line. But some of these mothers were very poor indeed. In the years between 1996 and 2003, roughly one in 10 reported that her total household income was less than \$2,500. The growth of this group helps explain the rise in severe poverty.

Of course, \$2,500 worth of goods and services is not enough to keep a mother and child alive for a year, so we cannot take these reports literally. Some of these mothers had other income that they did not report, either because it was illegal, because they worked off the books, because they had a boyfriend whose presence they did not mention, because they got money from a parent about whom the Census Bureau does not ask, or because the household’s principal breadwinner had recently moved out. (The Census does not ask about the income of people who lived in the household last year but no longer live there at the time of its March survey.) That said, we still need to know far more than we now do about who these mothers are, why they are not getting TANF benefits, how they survive, and how their children are faring.

NOT MOVING IN TANDEM

Although chart 2 suggests that most single mothers had slightly more resources in 2003 than in 1996, those who went to work also had more expenses. Working mothers usually have to pay for transportation from home to work, and most of them also have to spend more on clothing. Furthermore, while child care subsidies rose between 1995 and 2003, subsidized child care is not always available at the time and place where a working

mother needs it, so out-of-pocket spending on child care often rose. If single mothers’ work-related expenses rose as much as their incomes, they would not have had any more money left for food, housing, or children’s sneakers than they did before. Indeed, some of them may have ended up with less discretionary income than before.

Health-insurance coverage is another important determinant of a mother’s expenses. If going to work meant that fewer single mothers were covered, as it did right after welfare reform, medical bills could have eaten up working mothers’ extra income. Indeed, some mothers might have gone without the medical care they previously would have received. We measure trends in health-insurance coverage by calculating the proportion of the people with insurance in each single mother’s household. This proportion hardly changed: It averaged 79.7 percent in 1996, 80.2 percent in 2000, and 80 percent in 2004. The proportion of single mothers with Medicaid coverage fell from 1996 to 2000, but by 2004 it had climbed back to its 1996 level. These statistics do not suggest that welfare reform cut single mothers’ insurance coverage. But insurance does not cover everything. Because the cost of medical care rose faster than most other prices during these years, single mothers’ out-of-pocket costs probably rose too.

One way to see if single mothers *felt* richer in 2004 than in 1996 is to see whether more of them thought they could afford a place of their own. This is not a measure of material well-being. A single mother who lives in someone else’s home often has more creature comforts than a mother who has a place of her own. Single mothers want their own place because they want control. If a mother has a place of her own with her name on the lease, she can evict a boyfriend who misbehaves or stops helping pay the rent. If his name is on the lease, her material standard of living may be higher, but he has the whip hand in domestic negotiations. The same logic applies when a single mother lives with her mother. If a single mother lives in her mother’s home, her mother is in charge and she may often be treated as if she were still a child. If she has her own place and lets her mother live with her, she feels like a grown-up.

The proportion of single mothers who headed their own households showed no clear trend between 1995 and 2005. About a sixth of all single mothers lived with relatives (usually one or both parents). Another 4 or 5 percent lived in a non-relative’s household. The rest headed their own household. The fact that declining poverty was not accompanied by an increase in the fraction of mothers with their own household suggests that discretionary income did not rise much in the bottom part of the distribution.

GETTING ENOUGH TO EAT

The U.S. Department of Agriculture (USDA) has paid the Census Bureau to conduct a “food security” survey every year since 1995. The survey asks more than 40 questions about whether households had trouble getting enough to eat during the previous 12 months. The April 1997 survey covers the period just before and after August 1996, when Congress replaced AFDC with TANF.

The problem that single mothers reported most frequently was running short of money and having to “stretch” food. Except

MAJOR CONDITIONS ATTACHED TO TANF BLOCK GRANTS

Work Requirements: States must have a plan to make recipients engage in “work-related activities” once they have received TANF for 24 months. States also had to ensure that the number of recipients engaged in such activities was equal to a specified share of their 1995 caseload, which reached 50 percent in 2002. Reductions in the caseload since 1995 could, however, also be counted toward this goal. Under the legislation adopted in February 2006, states must ensure that the number of recipients engaged in work-related activities is half their 2005 caseload rather than their 1995 caseload, and they can only count caseload reductions since 2005 toward this goal.

Lifetime Limits: Families may receive federally funded benefits for a maximum of five years. TANF allows states to set shorter lifetime limits. It also allows states to exempt up to 20 percent of their caseload from the five-year limit.

Eligibility: Legal immigrants with less than five years of residence, unmarried teenage mothers not living with a parent or guardian, and unmarried teenage mothers who have dropped out of high school cannot receive *federal* benefits, although states can (and often do) provide recent immigrants with benefits from state funds.

for an upward blip in the December 2001 survey, this problem declined steadily, affecting only 44 percent of single mothers in 2003 compared to 57 percent in 1995. In 1995 even households near the middle of the income distribution for single mothers often reported this problem. Since these mothers' real income rose 15 percent between 1995 and 2003, the fact that they were less likely to report such problems in 2003 is no surprise.

Other problems the USDA asks about range from worrying that food will run out before the end of the month to reporting that a child went hungry for an entire day. Almost all these problems declined between April 1995 and April 2001. Almost all of them also rose during the recession. They were about as common in December 2003 as they had been in April 1997, but less common than they had been in April 1995. In 1997, for example, 26.9 percent of single mothers said they had worried that they would run out of food before the end of the month. In 2003 the figure was 27.6 percent—a tiny increase. At the other end of the severity scale, 2.4 percent of mothers said in April 1997 that a child in their household had gone hungry for an entire day during the past 12 months. In December 2003 the figure was 2 percent—a tiny decrease. The stability of these numbers is consistent with what we saw when we looked at health insurance and at having a place of one's own in which to live. Taken together, these facts suggest that living standards did not change much between 1996 and 2003 for single mothers in the bottom part of the income distribution.

If living standards have not changed for low-income single mothers, the apparent fall in the poverty rate shown in chart 2 is obviously misleading. The same must be true of the Census Bureau's poverty estimates for single mothers, which declined even more than ours and have been widely cited by defenders of welfare reform. The most obvious way of reconciling a declining poverty rate with stable levels of material hardship is to recognize that work-related expenses, which the Census Bureau does not measure, rose after 1996.

But work-related expenses may not be the only reason why our measures of living conditions failed to improve. Because of the EITC, most single mothers with jobs get a substantial check soon after they file their tax return. (Recipients are allowed to take the credit monthly rather than annually, but few do.) Recipients often use their EITC check to make a down payment on a car they can use to get to a better job, on a new living room set, or on other "big-ticket" items. As a result, the monthly income they use for food and rent may then be no higher than it was when they were on welfare.

One final caveat. Our findings do not show that welfare reform per se lowered poverty or left living conditions largely unchanged. Welfare reform was not a laboratory experiment in which everything else remained constant. It was accompanied by a lot of other legislation aimed at helping low-wage workers and their children. Congress had raised the Earned Income Tax Credit in 1993, and single mothers got more EITC money as more of them went to work. Medicaid coverage of low-income children expanded steadily because of changes enacted

before 1996. Congress also raised the minimum wage within days of passing welfare reform. Low-wage workers' access to Medicaid also improved after 1996. Without all these changes, welfare reform might well have lowered living standards, just as liberals feared.

DEFENDING THE TWO-PARENT FAMILY

For many conservatives the primary goal of welfare reform was not to improve single mothers' standard of living but to make them work for what they already got. This idea had overwhelming public support, and the United States has clearly moved in that direction since 1996. The late 1990s were the first economic boom in decades when employment increased faster among single mothers than married mothers. After the boom ended, some single mothers lost their jobs and had a hard time finding new ones. But work remains more common than it has ever been before.

But some conservatives also hoped that forcing single mothers to work would discourage out-of-wedlock childbearing and encourage marriage. For these traditionalists, welfare-reform

Welfare is no longer the poverty trap that it was, but it is less of a safety net. As other federal funds are cut, the safety net will become more threadbare.

legislation that raised single mothers' material standard of living would have seemed counterproductive, because it would have made single motherhood even more economically attractive than AFDC had.

According to the National Center for Health Statistics, the birth rate among unmarried women of childbearing age rose almost continuously from 1940 until 1994. It declined briefly between 1994 and 1996, before TANF replaced AFDC, and was basically flat from 1996 to 2002. It jumped in both 2003 and 2004, however, and was higher in 2004 than in 1992. The timing of these changes has no obvious relationship to the timing of welfare reform, but that may be because lots of other things also changed during these years.

If we compare blacks to non-Hispanic whites, we see a more striking pattern. In 1994, unmarried black mothers were considerably more likely than unmarried white mothers to receive AFDC. Thus if welfare reform made single motherhood less attractive, blacks should have been more affected than whites. And that may be what we see. The birth rate among unmarried white women was flat between 1994 and 2003. The birth rate among unmarried black women declined 18 percent. As a result, nonmarital births have accounted for a declining fraction of all black births since 1994. These racial differences suggest that welfare reform may have had an impact on nonmarital childbearing after all—a small impact among whites that is offset by other factors, but a larger impact among blacks that is not fully offset by those factors. Still, the evidence is hardly conclusive.

WHAT NEXT?

Welfare reform may not have had a big impact on single mothers' typical living conditions, but it transformed the political landscape. For the past 10 years the political action has almost all been in state capitals, not Washington, D.C. Once TANF gave states more control over welfare, most governors concluded that the best way to look good to the electorate was to cut the welfare rolls as rapidly as possible, and that was what they did. Unlike AFDC, which gave a state more federal money when it spent more of its own money, TANF gave states a fixed amount of federal money based on what they had received in the last years of AFDC. Under TANF, therefore, cutting the welfare rolls left states with more federal money for child care, job training, and other programs that help single mothers hold jobs.

In theory, TANF block grants were always contingent on a state's meeting federal work requirements and enforcing federal time limits. Since 2002 states have had to ensure that the number of families getting TANF and not participating in "work-related activities" was less than half the number getting AFDC in 1995. Now they will have to ensure that the number of people getting TANF and not participating in work-related activities is less than half the number getting TANF in 2005. The Congressional Research Service estimates that the new rules will raise the number of families facing work requirements by 70 percent. Because today's TANF recipients tend to have more problems than the typical AFDC recipient had in 1995, moving today's recipients into the labor force will be harder. It is unclear how many states will re-

sist the temptation to just push these families off the rolls entirely.

For welfare reform's critics, time limits have traditionally been an even bigger worry than work requirements. States can exempt 20 percent of their caseload from the five-year lifetime limit on TANF benefits. But the 20 percent figure was not based on much evidence about how many recipients could really be expected to work. Nobody knew. Critics of welfare reform therefore worried about what would happen to mothers who reached their lifetime limit but were caring for a sick child or a frail parent; were sick themselves; or were too disturbed, too addicted to alcohol or drugs, or too slow-witted to hold a job.

Mothers began hitting the TANF time limit in 2001. Thus far, states appear to have managed this problem pretty successfully, using a combination of the 20 percent exemption, transfers to disability programs, and transfers to state-funded programs for the hard-to-employ. Recent reports by the Department of Health and Human Services indicate that very few TANF cases have been closed due to time limits, and some of those cases were transferred to state-funded programs.

The main reason welfare reform has hurt so few families is that the combination of rising wages and work supports like the EITC and child-care subsidies made work an economically viable option for single mothers who could hold a job. But the damage was also limited by the fact that states had enough flexibility to shelter mothers they judged incapable of working. That flexibility is now being reduced dramatically. The economic fate of single mothers is now tied to the business cycle in the same way as that of other working-age parents. Welfare is no longer the poverty trap that it was, but it is also less of a safety net. As other federal funds aimed at the poor are cut, the safety net will become even more threadbare.

By the time Congress abolished AFDC in 1996, everyone hated it. Liberals hated it for being too stingy. Conservatives hated it for supporting the undeserving. The public hated it for promoting idleness instead of work. Recipients hated it for forcing them to cheat in order to survive and then treating them like dirt because it suspected them of cheating. Nobody wept when it died.

But TANF was also a compromise that pleased neither liberals nor conservatives. Liberals thought that its time limits and work requirements would, as Senator Daniel Patrick Moynihan famously said, leave "tens on tens of thousands" of children sleeping on grates. Gingrich Republicans thought it was nowhere near tough enough. President Bill Clinton, who vetoed the Republicans' initial proposals, eventually signed the bill even though he thought it was a bad piece of legislation—because he thought it was still better than AFDC. For the past decade that has probably been true. Whether it will remain true is an open question. **TAP**

PROGRESSIVE without apology.

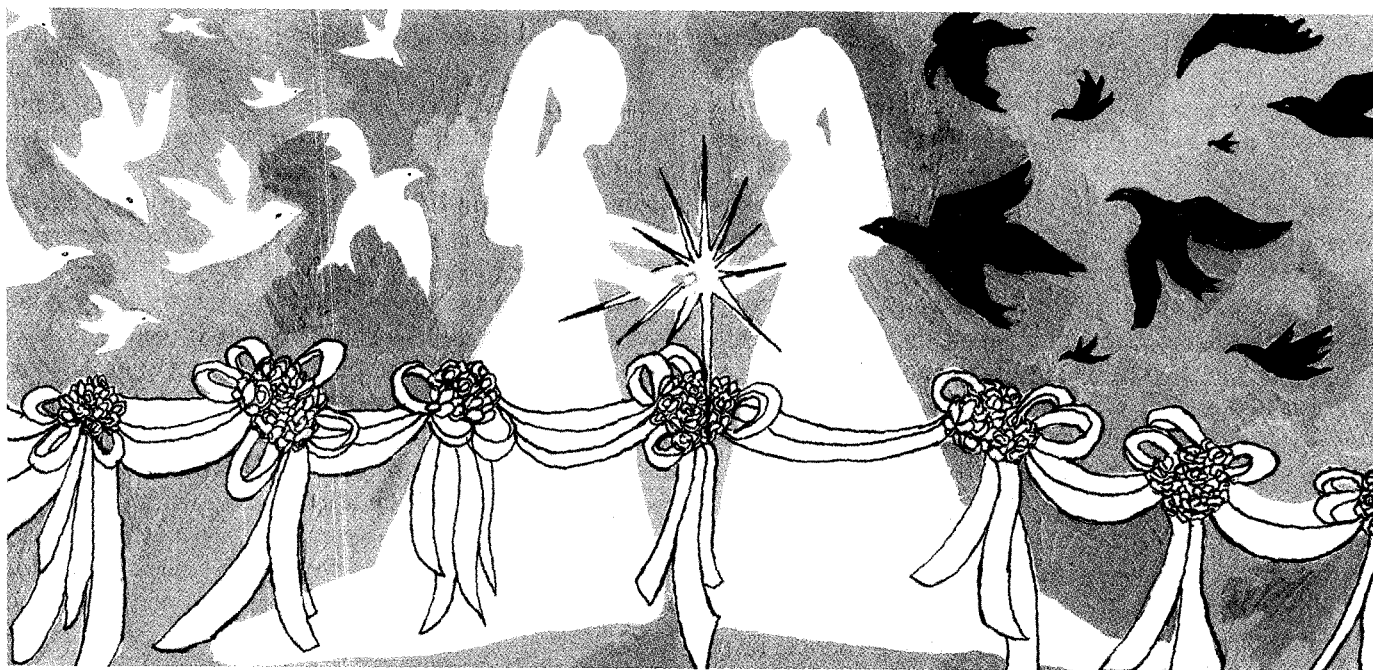


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Marital Blitz

This November, anti-gay-marriage bills will be back on ballots with a vengeance. But this time around, the gay and lesbian activist network is ready to play hardball.

BY E.J. GRAFF

DO YOU REMEMBER THE FALL 2004 GAY-BASHING festival? In 13 states, voters agreed to add to their constitutions a phrase like this one: “Marriage is between one man and one woman.” The gay-bashing came afterward, when Democrats and liberal pundits declared that greedy gay folks had brought those initiatives on themselves with their foolish pursuit of marriage equality—and were therefore responsible for John Kerry’s loss. Political scientists have since debunked the claim that anti-marriage initiatives brought Kerry down. But here’s the bad news: The anti-marriage initiatives are back.

This fall, Defense of Marriage Acts (DOMAs), which declare that “marriage is between one man and one woman,” and SuperDOMA amendment initiatives, which also ban “marriage-like” recognition of same-sex pairs, will be on the ballot in Alabama, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. They’re also likely to qualify for the ballot in Arizona, California, and Colorado. At the same time, marriage-equality lawsuits are percolating up through the courts in California, Connecticut, Iowa, Maryland, New Jersey, New York, and Washington; at least one is likely to win soon, giving cul-

ture warriors an excuse to roar out still more marriage-protection proposals. Worse yet, once these initiatives pass, family-values folks will renege on their moderate rhetoric and use them to try to ban any legal recognition, no matter how small or even symbolic, of same-sex couples.

Here’s the good news. First, 2004’s DOMA and SuperDOMA amendments were misread. They did not represent an anti-gay backlash; in fact, public opinion toward lesbians and gay men is warming more every day. Second, the “gay agenda” now has a new plan for winning over the long haul. For years, lesbian, gay, bisexual, and transgender (LGBT) legal groups have been the most successful branches of what’s loosely called the gay movement. As a result, there’s been a winning air war—but too few ground troops to solidify some of those wins. Now the political groups are catching up. LGBT organizations have developed a strategic plan to win marriage equality—and along the way, anti-discrimination laws, zero-tolerance for school gay-bashing, and more.

A 15-year strategy has been agreed to by all the major organizational players. Funding is in place, and new tactics are being developed and tested in this year’s biggest clashes with anti-gay

groups. As a result, says Rodger McFarlane, executive director of the LGBT-focused Gill Foundation, "for marriage, there is a strategy, movement coherence, and funding at scale." Along the way, LGBT groups are planning to change the political climate in ways that will force politicians to support gay rights.

And the best news? As part of those tactics, LGBT groups are helping to build a new progressive coalition from the ground up.

UNDERSTANDING THAT 15-YEAR PLAN REQUIRES UNDERSTANDING the context: Despite the fact that Americans keep voting for DOMAs, there is no anti-gay backlash. Rather, each year more Americans think lesbians and gay men should be treated as full citizens. In 1977, Gallup found that 56 percent of Americans believed you shouldn't be fired just for being lesbian or gay; by May 2003, that figure was 88 percent. In 1992, 59 percent of Americans thought lesbians and gay men should serve openly in the military; in 2005, that figure was almost 80 percent.

With this public support, in 2005—right after 2004's putative anti-gay "backlash"—there was tremendous LGBT progress. Illinois and Maine passed anti-discrimination laws. California's legislature voted to gender-neutralize marriage—a historic first—despite Governor Arnold Schwarzenegger's veto. Massachusetts' legislators upheld marriage equality. Connecticut's legislature passed a civil unions law. Cincinnati, Indianapolis, and Topeka—hardly liberal bastions—passed LGBT antidiscrimination laws; Virginia's governor and Salt Lake City's mayor extended health-insurance coverage to government employees' same-sex domestic partners; and Alaska's Supreme Court unanimously ruled that—despite the state's DOMA—local governments must offer equal benefits to employees' married spouses or same-sex partners. That's why the religious right is so eager to run anti-marriage measures. "We were so close to winning completely on basic nondiscrimination that the discussion had to go to this completely new level in order to shock and create pause among the general voters," said Thalia Zepatos, a National Lesbian & Gay Task Force field organizer in California.

DOMAs are sneaky: They don't mention lesbians and gay men. If Americans think about same-sex marriage at all, they're torn between the basic American belief that "fair is fair," and the gut sense that "marriage has always been this way." DOMAs appeal to the latter idea. The pro-DOMA campaigners explicitly tell voters that the measure doesn't insult lesbians and gay men, but merely protects the word "marriage." After 30 years of running anti-gay ballot initiatives, the religious right has finally found a winning phraseology. After all, who's hurt when you tell people who can't get married, that they *really, really* can't get married?

DOMAs have been so successful that, like potato chips, no state can pass just one. Between 1995 and 2003, 40 states put DOMAs on the books—before Massachusetts opened marriage, before 13 states in 2004 passed all-but-redundant anti-marriage constitutional amendments. Consider Virginia, where the legislature passed its first DOMA statute in 1997, beefed it up to a SuperDOMA in 2004, and now has a SuperDOMA constitutional amendment on the 2006 ballot.

THE 2004 MARRIAGE INITIATIVES AND THE SUBSEQUENT Democratic gay-bashing had a salutary effect on LGBT organizations. "People had a strategic epiphany that [victory] wasn't going to come in an avalanche," said Evan Wolfson, founding director of the national group Freedom to Marry. "We would need a fifteen-year plan, not a two-year plan. That sunk in in a much more grounded way, with a sober awareness that it would be much longer and harder."

The 2004 votes woke the community up to the fact that the LGBT legal superheroes (Lambda Legal Defense and Education Fund; Gay & Lesbian Advocates & Defenders; National Center for Lesbian Rights; and ACLU's Gay Rights Project) could not defend their marriage gains. "[W]ith all the brilliant legal scholars that we have—and there are many—for whatever reason, there's been a blind spot on the political side," said Marty Rouse, who as director of MassEquality helped stop the Massachusetts legislature from putting the *Goodridge* marriage decision, which opened marriage to same-sex pairs, up for a popular vote. At the same time, the LGBT community has been bitterly reminded that Democratic politicians will join in the anti-gay attacks—unless LGBT groups make clear that doing so has a serious cost.

It's hard to convey the level of cold concentrated fury left by, say, Kerry's backstabbing in Massachusetts in 2004 and 2005, when he supported a state constitutional amendment that would undo the *Goodridge* marriages, or by Tennessee Democratic Congressman Harold Ford's vote in favor of a Federal Marriage Amendment. In one interview after another, LGBT advocates emphasized that gay money is no longer flowing to just any Democrat who asks. "We will reward our friends and punish the wicked," said Rodger McFarlane of the Gill Action Fund.

LGBT forces have decided to bulk up politically. "What can we build now to win our freedom?" is the question of the moment, said Rouse. "We can't wait for the Democratic Party. We have to do this for ourselves." That's possible in part because of money. A generation of frontline LGBT political activists are now in major funding positions, as they weren't before. Consider the transformation of the important Gill Foundation, launched by Colorado software entrepreneur Tim Gill in 1994 after his state passed an anti-gay constitutional amendment (later overturned by the Supreme Court). In 2004, Gill hired a new executive director: the colorful and impatient activist Rodger McFarlane. Under McFarlane's leadership at the Gill Action Fund, the foundation's 501(c)(4) sibling, Gill has been funding in-depth research on opinions and voting behavior. McFarlane has also begun convening all the major LGBT organizational players in hopes of coming up with long-term plans on marriage equality, federal legislation, and faith-based organizing—which he will then help fund.

Elsewhere, LGBT political activists Urvashi Vaid and Tim Sweeney have stepped into key funding positions at family foundations committed to LGBT issues. These players are rounding up still other funders—progressive allies like Gara LaMarche at the Open Society Institute and wealthy individual lesbians and gay men—to fill out the war chest. At the Arcus Foundation, Vaid just gave \$3 million—a record donation for LGBT rights—to the Task Force's movement-building, training, and organizing efforts. Others are funding the Equality Federation, a brand-new coalition

of LGBT state groups that helps local activists meet and swap experiences, tactics, insights, and resources. All politics are local, especially LGBT-related politics. So, therefore, are the approaches to winning marriage equality. The strategy—which has been developed and agreed to by people involved in every major LGBT organization—is what Wolfson is calling the “2020 Vision,” as outlined at the Task Force’s Creating Change conference last fall. By the year 2020 (give or take five years), the goal is for 10 states to have full-marriage equality; 10 states to have civil unions or the equivalent; 10 states to have nondiscrimination laws and be repealing (or peeling back the effects of) their anti-gay marriage amendments; and the final 20 states to show progress.

An informed look at the national map shows that all these goals are achievable. Five state courts—in Washington, New Jersey, California, New York, and Connecticut, probably in that order—could easily rule in favor of marriage equality in one to five years. (Washington’s decision, expected for months, could come any moment.) All the New England states could move to marriage equality—some by legislature, some by judiciary. That optimism is solidly founded: No New England state has passed a DOMA constitutional amendment; public opinion favors LGBT equality; the region shares Boston’s media market and has seen that married same-sex couples haven’t hurt Massachusetts; each state has a relatively well-organized LGBT presence; and each state’s constitution is hard to amend.

New Jersey, a DOMA-free state, is also likely to get marriage equality sooner rather than later. Opinion polls consistently show 55 percent of the state’s voters favor full marriage equality. The legislature has passed and then beefed up a domestic-partnership law, and a marriage lawsuit is moving steadily through the state’s friendly courts. Oregon’s savvy and muscular LGBT group will almost certainly win civil unions, and by 2020 could even repeal its anti-marriage amendment—and go the distance.

In the bottom 20 states—predictably the South and the northwestern plains states—the goals are more modest. “Can every state support marriage?” Rouse says. “Absolutely not. Can they pass nondiscrimination bills? I think that’s possible. Alabama is the only state in the country where not one gay person has a right. Why not fight for a nondiscrimination law in Birmingham? Even if we don’t win but put up a good fight, that sends a message.” This kind of effort takes political muscle with local city councils and in state legislatures, precisely the kind of muscle that LGBT organizations are now building.

AS IN MOST PROGRESSIVE MOVEMENTS THESE DAYS, LGBT organizations are moving staff and funding toward the states. There, the top priorities between now and November are holding the high-profile gains in Massachusetts

and California, where a DOMA and a SuperDOMA may be headed toward ballot boxes, respectively. The key tactics in both states are: build progressive coalitions, invest in faith-based organizing, talk to voters one on one, and play hardball politics.

California offers an outstanding political model. In 2000, its voters passed a simple DOMA. The state’s LGBT forces came up with an incremental strategic response: Year after year, the Democratic legislature added responsibilities and recognitions to its domestic-partnership registry. By January 1, 2004, California’s domestic partnerships became the equivalent of Vermont’s civil unions—albeit for a citizenry of 34 million rather than 621,000, making it the most important same-sex partnership law in the nation. Since California courts have found that this registry does not violate the DOMA, two feuding religious-right coalitions are now circulating petitions trying to get enough signatures to ask

voters to amend the state constitution by restricting marriage to different-sex pairs and by dumping the domestic-partnership registry.

To date, no DOMA has been defeated in an open popular vote. On the other hand, the California electorate strongly supports the state’s domestic-partnership registry—by 72 percent in one poll. So LGBT advocates in California have been working on the “Equality for All Campaign” since fall 2005. The key component: building progressive coalitions. Last year, LGBT organizers and volunteers helped progressive allies defeat Schwarzenegger’s initiative slate, especially the “parental notification” bill, which



would have required teenage girls to tell their parents before getting an abortion. In return, those groups are already training their organizers and educating their members to fight the threatened SuperDOMA.

Women’s groups and unions have been behind gay rights for quite awhile, although organizing for each other on the ground is a breakthrough step. But the coalition also includes groups representing people of color, which have been slower to embrace LGBT rights. For instance, California’s is the first national NAACP chapter to endorse marriage equality; the NAACP has been using its lobbying power for marriage in the legislature, and will deploy ground troops in the campaign. The same goes for the United Farm Workers (UFW): Dolores Huerta, one of UFW’s founders, is a vocal ally, and is credited with winning over Democratic assemblymember Simón Salinas on the marriage equality bill; and the UFW has donated staff member Christine Chavez, granddaughter of César, to organize Latino and labor communities for marriage equality. Similar work is being done with Asian American and Pacific Islander groups.

Progressive and moderate religious groups are stepping up to help defeat California’s SuperDOMA. Hundreds of congregations have been celebrating their members’ same-sex bonds, and

are now helping defend those families via an umbrella group called California Faith for Equality. In Massachusetts, the Religious Coalition for the Freedom to Marry has been an essential partner in hanging on to the *Goodridge* decision. Ministers and rabbis in the Bay State have testified to their legislators, encouraged their congregants to write letters, persuaded fellow religious leaders to back (or not oppose) marriage equality, and told the media that *their* God thought marriage equality was morally urgent. Faith-based organizing worked so well in Massachusetts—and is critical for LGBT success, since lesbians and gay men are regularly called sinful and immoral—that it's high on the organizing checklist nationally and for every other state.

In California, activists have another strategic goal: two million conversations with individual Americans about why gay and lesbian couples need and deserve access to the sacred M-word. LGBT groups are helping train their coalition partners to talk to family, friends, neighbors, and colleagues. After measuring tactics in a wide variety of communities, from Anchorage to Houston to Atlanta, talking to likely voters one-on-one is “the only thing I know so far that works,” said Dave Fleischer, Task Force political director.

The word “marriage” is an essential part of the message. That's new. In previous years, many state groups have run their anti-DOMA campaigns by avoiding “marriage.” Based on polling, state groups put out variations of the messages “Don't discriminate” and “Don't amend our sacred constitution.” Research showed that no one bought it. “We need to be up front and talk about marriage,” said Christopher Ott, executive director of Action Wisconsin. “We need to make them feel that if they pull the wrong lever they are going to be hurting their friends and neighbors.” Organizers stress that even if voters disagree on marriage equality, the SuperDOMAs would do much more, barring families from any other legal recognition.

But the biggest lesson of 2004 and 2005 may be this: Play hardball politics. Every LGBT organizer now agrees that Massachusetts is the model to follow—because LGBT forces actually won. In November 2003, in *Goodridge v. Massachusetts Department of Public Health*, the Massachusetts Supreme Judicial Court handed down a decision that opened marriage to same-sex pairs. In March 2004, the Massachusetts legislature proposed a DOMA constitutional amendment that would overrule the court if it passed the legislature twice and then was approved by voters. In the first vote, the overwhelmingly Democratic Massachusetts legislature passed the DOMA 105-92. The political group MassEquality went all out to reelect friends and defeat enemies, the vast majority of whom were Democrats. “We spent more money on direct mail than the state Democratic Party spent in 2004 Massachusetts elections,” said Rouse. It also conducted polls, sent money and volunteers into the political campaigns that most needed help, and sat down with other progressive groups to talk about endorsements. MassEquality reelected its friends handily, even in contested races. And it replaced an opponent—Democrat Vincent Ciampi, a longtime legislator whose seat was considered safe—with an openly gay man.

The legislature got the message. On the next round it defeated the DOMA, 157-39. A new citizen-initiated DOMA is threatened for

the 2008 popular ballot. As LGBT groups are taking aim, Massachusetts' legislators are far more helpful than they were before.

LGBT groups are taking the Massachusetts show on the road. A year ago the Human Rights Campaign (HRC), the best-funded LGBT organization, hired as its new president Joe Solmonese, who had spent 12 years at EMILY's List (two-and-a-half years as CEO) building coalitions and electing candidates, and who brought his politically savvy rolodex with him. Within six months, Solmonese had hired ministerial activist Harry Knox to help organize faith communities and Rouse as HRC's national field director to help state groups create their own organizing plans. (All this has surprised observers, since the group has long been criticized for its singular inside-the-beltway focus, and since HRC's commitment to marriage equality has often been considered suspect.) The Stonewall Democrats, who also replaced LGBT opponents with supporters in Cleveland Heights, Ohio, have been holding “Santorum retirement parties,” fund-raisers to take down the Pennsylvania senator who compared homosexuality to “man on child, man on dog” sex. They're preparing the usual panoply of campaign tactics—list enhancement, voter ID, get-out-the-vote methods—in key Pennsylvania districts to tip the balance for Democratic candidate Bob Casey. According to Eric Stern, the group's executive director, similar local efforts are underway to help gay-friendly Democrats win in such states as Arizona, Maine, Ohio, Virginia, and Wisconsin.

Progressives and Democrats must come to grips with the fact that “gay marriage” is not going away. “The right wing is driving this,” explained the Task Force's Fleischer. “We don't have the ability to pull it off the table, even if it were the wisest thing in the world.” In the U.S. Congress, Republicans may reintroduce a Federal Marriage Amendment at any time, dragging LGBT resources away from the states and back to DC. In the unfriendly states, most of this fall's DOMAs will pass, as will most of those proposed for 2008. At the same time, in the friendly states, LGBT groups will keep winning their other battles (including marriage rights) via both legislatures and courts. Even in unfriendly states, newly hatched statewide LGBT groups are now working to expose and repeal the SuperDOMAs' more extreme effects, and to move forward on more popular measures like antidiscrimination.

At a minimum, advocates will begin to demand that nongay progressives and Democratic politicians refrain from the kinds of attacks they made in 2004 and to talk about progressive family values in ways that advance, rather than hobble, LGBT rights. After all, except for a few hard-right believers, most nongay voters rank same-sex marriage at the very bottom of their list of political concerns. There's no point in pandering to the other side's base and suppressing your own. So repeat after me: “I believe in fair and equal treatment for all American families. Now, why do you think my opponent wants to change the subject from ... [pick one: Medicaid prescription disaster, Katrina aftermath, Iraq war, DC corruption, et cetera]?” Now you're back on track. **TAP**

E.J. Graff, resident scholar at the Brandeis Women's Studies Research Center, most recently collaborated on Evelyn Murphy's book Getting Even: Why Women Still Don't Get Paid Like Men—And What to Do About It.

Culture & Books

"Yoo insists [that] a generation that had only recently battled king and Parliament 'decided to mimic the British forms of government.'"

—PAGE 49



Smokin' Prose: Dwight Macdonald, the bard of highbrow

LETTERS

DWIGHT AND LEFT

The centenary of Dwight Macdonald's birth should inspire more Americans to read their most crotchety, snobby, and brilliant critic.

BY JOHN RODDEN AND JACK ROSSI

IN 1958, WRITING IN THE JESUIT weekly *America*, the historian John Lukacs speculated whether Dwight Macdonald might become "The American Orwell." Noting that Macdonald's American "reputation is rising," Lukacs wrote that he was already known among British intellectuals "as one of the most interesting American critics of these times." In particular Lukacs lauded Macdonald's "lonely and courageous positions" in the mid-1940s—on Yalta, the Allied insistence on unconditional surrender, the mistreatment of Japanese-Americans—and argued that Macdonald's political

stance "coincides with the often lonely positions taken by George Orwell amidst the leftist intelligentsia in Britain."

The comparison might seem absurd nowadays. Orwell is a household name who commands an astonishingly broad audience. By contrast, the name Dwight Macdonald often occasions the response, "Dwight who?"—along with the inevitable misspelling of his surname to match that of the hamburger chain. Back in 2003, the centennial of Orwell's birth grew into an international cultural event that lasted the entire year, with academic symposia and countless feature articles

devoted to his writings and legacy. This month brings the centenary of Macdonald's birth (March 24), which is likely to be commemorated by no more than a few diehard fans.

But it does no disservice to Orwell—whom Macdonald deeply admired and got to know via an extensive correspondence—to insist that Macdonald (1906–1982) has been unjustly neglected. His centennial is a fitting occasion to reflect on his accomplishments. A contributor over the years to *The New Yorker*, *The New Republic*, *Esquire*, and *Encounter*, among other publications, Macdonald should be honored as an outstanding literary journalist, an important shaper of intellectual and cultural opinion, and a plausible (if more limited) successor to H.L. Mencken and Edmund Wilson. And while Macdonald was not, strictly speaking, a liberal in the commonly understood sense—his attacks on liberals, labor, and the New Dealers were relentless; he referred to them as the "liblabs," a term of sneering ridicule meant to impugn the wishy-washy complacency of post-war liberal democracy—a renewed appreciation of Macdonald's work is crucial to the task of revitalizing political liberalism in the 21st century. Like Lionel Trilling, Macdonald was a liberal critic of liberalism, a critic of the left from within its own ranks. He would have agreed with Trilling's praise in *The Liberal Imagination* of Nathaniel Hawthorne's "dissent from the orthodoxies of dissent."

As liberalism struggles to redefine itself today, that task of redefinition must grapple with and reject the easy orthodoxies of dissent within liberalism itself. MacDonald is a model for liberal intellectuals because he never hesitated to turn the spotlight on liberalism's weaknesses, and indeed on his own shortcomings too. His own incessant self-redefinition can exemplify for liberals today the impor-

tance of rediscovering the liberal tradition of healthy self-doubt at a time when many strains of liberalism have ossified into abstract, dogmatic faiths. Macdonald's example may guide us to a new mode of discourse: a language that will reflect and support the supple, self-questioning intelligence essential if fundamental liberal concerns about oppression and the fate of the underclass are once again to be foremost in our agendas. The aim must not be to develop more neoliberalisms, but rather more liberal consciences like Dwight Macdonald's.

BORN INTO A WEALTHY UPPER-MIDDLE-class family much like that of Orwell, Macdonald was educated at Exeter and Yale. At Exeter, he was one of the founders

editors Philip Rahv and William Phillips to wrest *Partisan Review* (PR) from the control of the American Communist Party, which had founded it three years earlier. During this time, Macdonald was jubilant: He had momentarily discovered a hospitable milieu—the PR “herd of independent minds,” in Harold Rosenberg’s memorable phrase. And despite his subsequent dissatisfaction with his PR colleagues, Macdonald’s encounter with this like-minded literary species also furnished him with his vocation. Influenced by his PR colleagues, all of whom were socialists of varying shades, and by the radical friends he gained via his wife, Macdonald flirted with Trotskyism in the late 1930s. He vehemently denied in later years that he was ever a Communist. He

ror; when the war broke out in September 1939, his position could best be described as anarcho-pacifism. Eventually this brought him into conflict with Rahv and Phillips, who believed that Nazism had to be defeated if Western civilization were to survive. Macdonald’s refusal to endorse this view began his process of withdrawal from PR, where leading editors regarded his outlook on the war as “revolutionary defeatism.”

Macdonald left PR in 1943 to found his own magazine. He christened his new journal *politics* (proudly contrarian, he always lowercased its name). Its existence (1944–1949) marks the high-water mark of his political journalism career, and its birth allowed him to pursue a unique political trajectory for the next five years in full public view. Macdonald wanted *politics* to become the vehicle for an intellectual exchange between America and Europe, and, as such, he enlisted a distinguished group of European writers of the left to contribute to his new magazine—Orwell, Albert Camus, Lewis Coser, Simone Weil, and Nicola Chiaromonte, the last of whom became Macdonald’s close friend and tutor on European political and cultural affairs. Possessing a clearly defined internationalist as well as radical stance, *politics* would become (in Macdonald’s words) a “transplanted spore of European culture” in the American body politic. Macdonald was something of a snob about European intellectuals, and the function of *politics* was in effect to Europeanize provincial American culture.

The last months of the war profoundly depressed Macdonald. He was disgusted by the massive Allied bombings with their terrible civilian casualties, a disgust that reached sickening levels when the United States used atomic bombs against Japan. Macdonald rushed out a special article for the August issue of *politics*, which trumpeted that “the concepts ‘war’ and ‘progress’ are now obsolete,” and that “the bomb is the natural product of the kind of society we have created.” The latter point reflected the fact that Macdonald was rapidly losing his residual faith in the political sense and decency of the American people. He was also disgusted by the

During his time at Partisan Review, Dwight was jubilant: He had discovered a hospitable milieu—the “herd of independent minds,” in one phrase.

of the Hedonist Club, a student group whose members thumbed their noses at the school authorities and traditions. At Yale, as editor of the *Yale Daily News*, he fought a series of battles with the Yale administration over the quality of the teaching there.

After graduation, Macdonald undertook his lone foray into the business world—a short, unsuccessful stint as a salesman for Macy’s. But the experience eventually led him to Henry Luce’s Time Incorporated. Macdonald was one of the bright young men of the 1920s whom Luce hired to create a new magazine, *Fortune*, which aimed to highlight the success of American business. But Luce’s timing couldn’t have been worse—he launched *Fortune* just as the Great Depression set in.

Macdonald’s years at *Fortune* (1929–1936) were stormy. Dissatisfied with the state of American society, he began a steady drift leftward, pushed by his more politically sophisticated wife, the socialite Nancy Rodman. He resigned to write a major exposé of conditions in the steel industry, a work he never finished.

In 1937, Macdonald joined hands with

admired Trotsky as an example of the politically engaged intellectual, but he was too much of a contrarian to remain loyal to Trotskyist ideology for long.

Macdonald’s political education parallels that of Orwell in key respects. Like Orwell, he was a consistent opponent of Stalinism. The bitter political and ideological infighting in the late 1930s among the PR crowd deepened Macdonald’s contempt for the Communist Party’s abrupt shifts in policy. He was active in the protests against Stalin’s show trials during 1936–1938 and served on John Dewey’s committee to investigate the charges against Trotsky and the old Bolshevik elite, which convened in Mexico in 1937. Macdonald’s years with PR (1937–1943) were formative, though Rahv and Phillips always regarded him as naive and lacking a coherent political philosophy. Because of the dizzying divagations of his political course, occasioned by his numerous, abrupt ideological about-faces, Macdonald frequently wasn’t seen as a serious political mind but was instead regarded as something of a jokester. The approach of war created a crisis for him. He viewed the coming conflict with hor-

Allied betrayal of the Poles in the Warsaw Uprising, the Allied intervention in the Greek Civil War on the side of the rightists, and the discovery of the Nazi death camps. Probably *politics* was the first journal to discuss in full detail the horrors of the Holocaust, when Macdonald published an essay by then-unknown Bruno Bettelheim in 1944 on the behavior of prisoners in the concentration camps.

Macdonald remained a pacifist with anarchist leanings until the time of the Berlin Blockade (1948-1949), when he reluctantly accepted the lesser-evil theory, supporting the West against the growing threat of Soviet imperialism. The blockade solidified his development toward a liberal anti-Communist stance, which crystallized with the approach of the 1948 presidential campaign. Macdonald's last great political crusade was an attack on Henry Wallace's presidential run as the Progressive Party candidate. Macdonald expanded a two-part article in *politics* into a book, *Henry Wallace: Man or Myth*, which exposed the Progressive Party as a front for communists and their "Stalinoid" (a favorite Macdonald barb) sympathizers. During his last years editing *politics*, Macdonald fell into despair about the fate of humanity. He lost any positive political vision. He even lost faith in his own ability to substantially influence the direction of political affairs, which seemed to him beyond the control of men, in the wake of the bomb and the division of the world, between the two super states: America and the Soviet Union. Still, he grudgingly took a side, affirming in a debate with Norman Mailer in 1952 that, if forced to pick, "I choose the West."

AT THIS POINT, MACDONALD CHanneled his full energies into literary and cultural criticism, which he had neglected during the war in favor of politics, and *politics*. Although he continued to contribute political pieces occasionally to the little magazines and quarterlies, Macdonald wrote increasingly for mass publications such as *Esquire* and *The New Yorker*, where he joined the staff in early 1952. His feisty criticism in their pages amounted to a running commentary on

what he regarded as the shabby "midcult" of post-war America and the middlebrow literature that thrived in the 1950s—literature that he despised.

Once he turned to cultural criticism, Macdonald's judgments took on a new sense of self-confidence. His positions on culture and art were firm and, in contrast to his political writings, witnessed no sharp reversals. Characteristically written with passion, authority, and certitude, Macdonald's cultural criticism also reveals his conservative side and his mistrust in the judgment of the American public. A streak of elitist pessimism about American society and its preference for midcult and low-cult runs through Macdonald's criticism of the 1950s and early 1960s—a pessimism that differed markedly from the Marxist-induced revolutionary idealism and optimism of his Trotskyist phase. Here, Macdonald diverged sharply from Orwell, who no more believed in the wisdom of the literary-intellectual elite than he did in Burnham's managerial elite. Despite his philosophical skepticism and dark vision in his last two

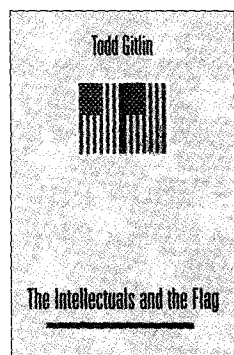
books, Orwell never placed his trust in any scientific-intellectual aristocracy. "If there is hope," wrote Orwell in 1984, "it lies in the proles."

Part of the reason Macdonald took pleasure in assaulting cultural artifacts—such as Mortimer Adler's pretentious *Synopticon* (the governing midcult concept in his Great Ideas series), or *Webster's New Third International Dictionary*, or the modernizing of the Revised Standard Bible—was his belief that the low-cult indulgences of the American demos had undermined the nation's taste. "Democracy" in the Eisenhower era had come to mean dumbing down. Serious essays on Ernest Hemingway, Mark Twain, and James Agee show Macdonald becoming more and more disenchanted as the decade advanced. His pessimism deepened because he could find no repository for his hope: Political affairs had turned sour for him and seemed futile and boring, and he found little to cheer in the world of literature.

Macdonald's disenchantment with American life had two consequences.

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The Liberal Conscience

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First, surely influenced by Orwell's example, he became enamored of English cultural life. He formed a connection in the mid-1950s with *Encounter*, which was edited in London. He resided in London in 1956-1957 near Orwell's widow, Sonia, whom he befriended. (In an unsuccessful attempt to convince Sonia to let him write Orwell's official biography, Macdonald emphasized his admiration for her deceased husband, calling him, "my kind of a guy.")

Macdonald believed the English literary scene and political culture were superior to anything in America. He admitted that he was "absurdly Anglophile, intellectually speaking." But his enthusiasm for English culture was old-fashioned. His Anglophilia did not extend to any esteem for the Angry Young Men (John Osborne, Colin Wilson, Kingsley Amis, John Wain, and John Braine), and he lumped them all with the Beat Generation in America as talentless poseurs and whiners. Their willingness to trash the past infuriated the traditionalist in Macdonald.

Second, after his return to America in the late 1950s, Macdonald conceived a major project on the impact of mass culture on contemporary society. "Mass Cult and Mid Cult," his most famous essay, had originally appeared in *PR* in 1960. Republished in 1962 as the lead essay in his collection *Against the American Grain*, the piece represented Macdonald's bid to be taken as a serious thinker and not just a clever journalist or cultural pundit. By the middle of the 20th century, argued Macdonald, the nation's high culture was being debased by the growing influence of middlebrow trash. He identified authors such as Stephen Vincent Benet, Archibald MacLeish, James Gould Cozzens, and the Hemingway of *The Old Man and the Sea* as exemplars of this "oozing midcult." Cultural taste in a democracy, he maintained, operates according to Gresham's Law: It drives out the finest ("highbrow") work and thus inexorably destroys a literary tradition. As a man of the left, Macdonald was rejecting the public's taste in cultural matters—a far cry from his stance in the 1930s.

Macdonald was at his weakest in trying to describe what is necessary to protect society from being inundated with mediocre art and literature. Ever the contrarian's contrarian, the best he could come up with was to be vigilant and stand "against the American grain." Moreover, Macdonald had his own faddish blind spots. He had high praise for Norman Mailer, whose work in the 1950s was often just a faux existentialist, "hipster" version of precisely the middlebrow trash that Macdonald dismissed. But Mailer was a close friend.

IT IS INTERESTING TO PONDER WHAT Orwell's reaction to "Mass Cult and Mid Cult" would have been. Orwell had a fondness for popular literature and was a believer in the concept of "good bad books." As the modern originator of the serious pop-cult essay (comic postcards, boy's magazines, the detective story, the crime thriller), Orwell might well have been receptive to the middlebrow artworks of the 1950s—at least as artifacts for his "semi-sociological criticism," as he once called it. They might provide precisely the material he would want to analyze for what it could tell him about society.

This difference between Macdonald's and Orwell's approaches to popular cultural criticism can be traced to differing attitudes toward values in a democracy. Orwell always retained an abiding trust in "common decency" (his signature phrase) and in the "common people." (Of course, whether he would have continued to do so if he had lived into the prosperous "You Never Had It So Good" days of England in the late 1950s is another matter.)

Macdonald's last big literary success came in 1962. He took up the cause of Michael Harrington's *The Other America*, a study of the invisible poor and their plight amid the nation's post-war prosperity. In the longest review-essay in the history of *The New Yorker*, Macdonald single-handedly turned Harrington's book into a best-seller. He even got his old friend Arthur Schlesinger Jr. to bring it to the attention of President Kennedy. Numerous historians credit

Macdonald's campaign for *The Other America* as the intellectual launch of the War on Poverty.

After 1962, Macdonald entered a steep decline. He wrote a few minor pieces for *The New Yorker* until the early 1970s. He also did a movie column for *Esquire*. But he was spent. He published nothing thereafter to match his best work of the past. He also became a virtual parody of his old 1930s self when drawn back into political action in the mid-1960s by the anti-war protest movement. Like many aging, born-again leftists of the 1960s (Jean-Paul Sartre was the most notable example), he was seeking the romantic radical experience he had missed out on during his youth. Where left-wing fashions were concerned, his normally sharp judgment began to fail him. He was taken in by the kind of poseurs that he exposed in the past: Eldridge Cleaver, Barbara Garson's Johnson-hating *MacBird!*, and the vulgarities of Abbie Hoffman and the Yippies.

For the last decade and a half of his life, Macdonald led a peripatetic existence, lecturing at various colleges and universities throughout the United States. He was urged by friends to write his autobiography, which could have served as a history of American intellectual life in the mid-20th century. His writer's block and heavy drinking stopped him. Macdonald died in December 1982 at the age of 76.

"Dwight" (as even his enemies called him, with genuine affection) is unjustly forgotten today. Even though most readers are unaware of his absence, the reality is that American culture is poorer without a brilliant gadfly critic like Macdonald. Indeed, his disappearance has left a sizable hole in American intellectual life. For although the void is far smaller, the fact remains that—like Orwell in Britain—no American intellectual has replaced Dwight Macdonald. His centennial ought to remind us of this. **TAP**

John Rodden is the author of several books on George Orwell, Lionel Trilling, and Irving Howe, among other works.

Jack Rossi is professor of history at La Salle University in Philadelphia.

BOOKS

ALL POWER TO THE PRESIDENT

THE POWERS OF WAR AND PEACE: THE CONSTITUTION AND FOREIGN AFFAIRS AFTER 9/11 BY JOHN YOO University of Chicago Press, 378 pages, \$29.00

BY GORDON SILVERSTEIN

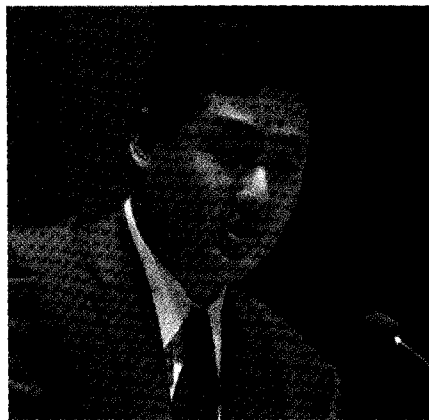
GEORGE W. BUSH WAS CAUGHT flat-footed on the morning of September 11, 2001. Intent on exercising executive power without any interference from the courts or Congress, the White House turned to John Yoo—a young law professor on leave to serve as a mid-level official in the Justice Department—to provide the constitutional foundation for the war on terror.

Yoo cranked out a series of now-infamous memos on topics ranging from the use of torture to the government's authority to eavesdrop on American citizens, attempting to square the Bush-Cheney demand for unfettered power with the limits imposed by the Constitution. In the shadow of 9-11, Yoo formulated a theory to support the claim that presidential powers in foreign affairs had steadily (and constitutionally) expanded over the past 200 years to the point where they are effectively unlimited. According to Yoo, the president can lawfully initiate war without congressional approval and reinterpret, or even abrogate, treaties such as the Geneva Convention on the Treatment of Prisoners of War.

But if you are a conservative—and Yoo most certainly qualifies—there are problems with this argument. If presidential powers can constitutionally expand in one realm, how can they be contained in others? Although unilateral executive power may be the dream of conservatives in foreign affairs (at least while a fellow conservative occupies the White House), it is their worst nightmare in domestic policy. Couldn't some future internationally minded president use these same powers to enter into or reinterpret agreements with other countries so as to bind American citizens to rules and requirements imposed by international organizations? What would stop a president from using

such powers, say, to prohibit the death penalty or to regulate energy use?

Now back in his role as constitutional law scholar, Yoo has produced a book that tries to square this circle, developing a radical constitutional theory that endorses an evolutionary, "living constitution" to support ever-expanding claims to executive powers in war and diplomacy, yet rejects this same approach when applied to



Yoo Turn: Forget the framers.

domestic affairs. To achieve this result, Yoo has to break with many fellow conservatives, who instantly assume the fetal position at the mention of a "living constitution." But he wins them back by demonstrating that his approach turns an obscure constitutional provision—the Treaty Clause—into a firewall that will prevent any blowback from the unfettered executive powers he has just crafted.

YOO'S FIRST PROBLEM IS THAT MOST modern-day conservatives interpret the Constitution through the doctrine of originalism, stressing the original intent of the framers. But the available evidence from those most intimately involved with the design of the Constitution offers little support for Yoo's theory of sweeping presidential powers. For example, at

the Constitutional Convention in 1787, Charles Pinckney said that giving exclusive powers to the president over war and peace "would render the Executive a Monarchy of the worst kind." To get around such statements by the framers, Yoo breaks from originalists such as Clarence Thomas (for whom Yoo clerked), ignoring the fairly clear objectives shared by those who wrote the Constitution, and instead relies almost exclusively on a far more ambiguous "original understanding" of the entire founding generation. From the available historical record, Yoo believes, we can decipher what this generation "would have," "could have," or should have understood the Constitution to mean.

In war powers, Yoo implausibly insists, a generation that had only recently battled king and Parliament in the Revolution "decided to mimic the British forms of government." And while he does offer a fair bit of evidence that these sentiments were widely held among well-educated Americans, he fails to recognize how self-consciously revolutionary this new system of government was, at least in the minds of its actual architects. Edmund Randolph, for example, spoke for many at the Convention when he said that Americans rejected Britain "as our prototype" and instead "required a different form of government." In Federalist 37, James Madison wrote that other confederacies had failed and could "furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued." The most the Americans could do, Madison insisted, was "to avoid the errors suggested by the past experience of other countries." As Louis Fisher convincingly demonstrates in his book, *Presidential War Power*, the framers "decisively rejected the British model" in war, treaties, and the appointment power, among other things.

The president's war and foreign-policy powers, however, have grown dramatically, whether or not they should have. The development of modern weapons that can reach the United States with virtually no warning and the crisis atmosphere of the Cold War encouraged

Congress to cede more power in foreign affairs to the president. And while the Supreme Court has never formally endorsed this shift, the justices have made clear that they would intervene only if Congress and the president were at an institutional impasse.

Yoo argues that this sort of evolutionary, "living constitution" rationale is acceptable in foreign policy because, despite the shifting balance, Congress still retains the ultimate check against executive abuse—the power to fund, or to refuse to fund, executive military adventures, which is all the Constitution requires.

And that brings us to a second problem with Yoo's radical constitutional theory. The power of the purse remains a key weapon in the congressional arse-

Yoo insists that whenever Congress wants to end a war, it can simply vote to cut off all funds for troops in the field. Technically, that's true. But it is politically impossible for members of Congress to withdraw funds from ongoing military operations without opening themselves to charges that they are denying our soldiers the ability to defend themselves. Just ask Representative Jack Murtha.

When a president asks Congress to support a war in advance, moreover, a majority decides the question. But if legislators reconsider and try to cut off funds, the president will almost certainly veto the attempt. In that case, Congress will need two-thirds approval to override and exercise what Yoo sees as its one and only power.

(but weak, decentralized power in domestic affairs). Nor is he the first to attempt to do so by insisting that the Constitution tolerates (even encourages) a hard line between domestic and foreign affairs powers.

The first may well have been George Sutherland, a Republican senator from Utah who later became a Supreme Court justice. America's belated and ill-prepared entry into World War I posed a real dilemma for conservatives like Sutherland who argued that Americans could no longer insist that the Constitution strictly limited government in foreign and domestic affairs alike. Unwilling to endorse broad governmental power across the board, conservatives sought a way to read the Constitution narrowly at home and broadly when it came to foreign policy.

That is precisely what Sutherland tried to do when, as a Supreme Court justice, he wrote the opinion in *United States v. Curtiss-Wright Export*, an often-misunderstood decision that is widely cited as the basis for executive war powers. This was a case, however, not about war powers, but about the delegation of power by Congress to the executive. The central issue was whether Congress could delegate to the president the power to suspend arms sales in a war-torn region of South America. And if the answer was "yes"—well, what would stop that same Congress from delegating to the president powers over the national economy or other domestic concerns? The answer Sutherland devised was a convoluted constitutional theory drawing a sharp distinction between foreign-policy and domestic powers and asserting that Congress could delegate broad authority in one yet not in the other.

Today's conservatives face a dilemma similar to Sutherland's: How can they make sure that nearly unlimited executive power in foreign policy won't allow some future president to sign off on global economic agreements or international conventions that will bind Americans to rules that might limit cherished liberties or constrain national sovereignty?

The solution, Yoo says, is the Treaty Clause. A president has two ways to formalize any international obligation or commitment. One is by negotiating a

As the president's powers in war have grown, changed circumstances have undermined the only remaining check that Congress has.

nal. But just as changed circumstances have enlarged presidential powers, those same circumstances have undermined the legislature's ability to use its most important weapon.

The purse still belongs to Congress. Only Congress can raise taxes, and congressional authorization is still needed before any checks can be drawn against the U.S. treasury. In the late 18th century—with no large standing armies or ships in ports around the world—a president had to secure funds in advance for any military campaign. Today, however, a president no longer has to go to Congress before waging war. With more than 1.4 million active-duty forces and another 860,000 or more active reserves, the commander in chief can deploy the armed forces on a moment's notice. The power of the purse is, at best, a way to stop adventures after they have started. But, in practice, what kind of power is that? If we are going to accept the need to abide by an evolutionary change in the powers of the president, why shouldn't we insist on an evolutionary change in the powers meant to check and balance the executive? That is simply not a question Yoo considers.

This is not a purely theoretical problem. In 1970, after more than 47,000 American deaths in Vietnam, Congress voted to repeal the Tonkin Gulf Resolution, which had been used since 1964 by Presidents Lyndon Johnson and Richard Nixon as evidence of congressional authorization of the war. But Nixon said that the repeal was "without binding force or effect," and he continued to pursue the war for another three years. So why didn't Congress cut off the money? The war's opponents tried. Solid majorities voted to end funds for military operations in 1970, and again in 1971. Congress finally prevailed in 1973, but the law did not go into effect until August 15, well after the Paris Peace Accords ended the war. The power of the purse was no match for a determined president once troops were already on the ground. Indeed, never in the modern era has Congress successfully used this power to prevent or stop a major war.

YOO IS NOT THE FIRST CONSERVATIVE legal scholar to try to devise a way to have his cake (strong, centralized power in war and foreign affairs) and eat it, too

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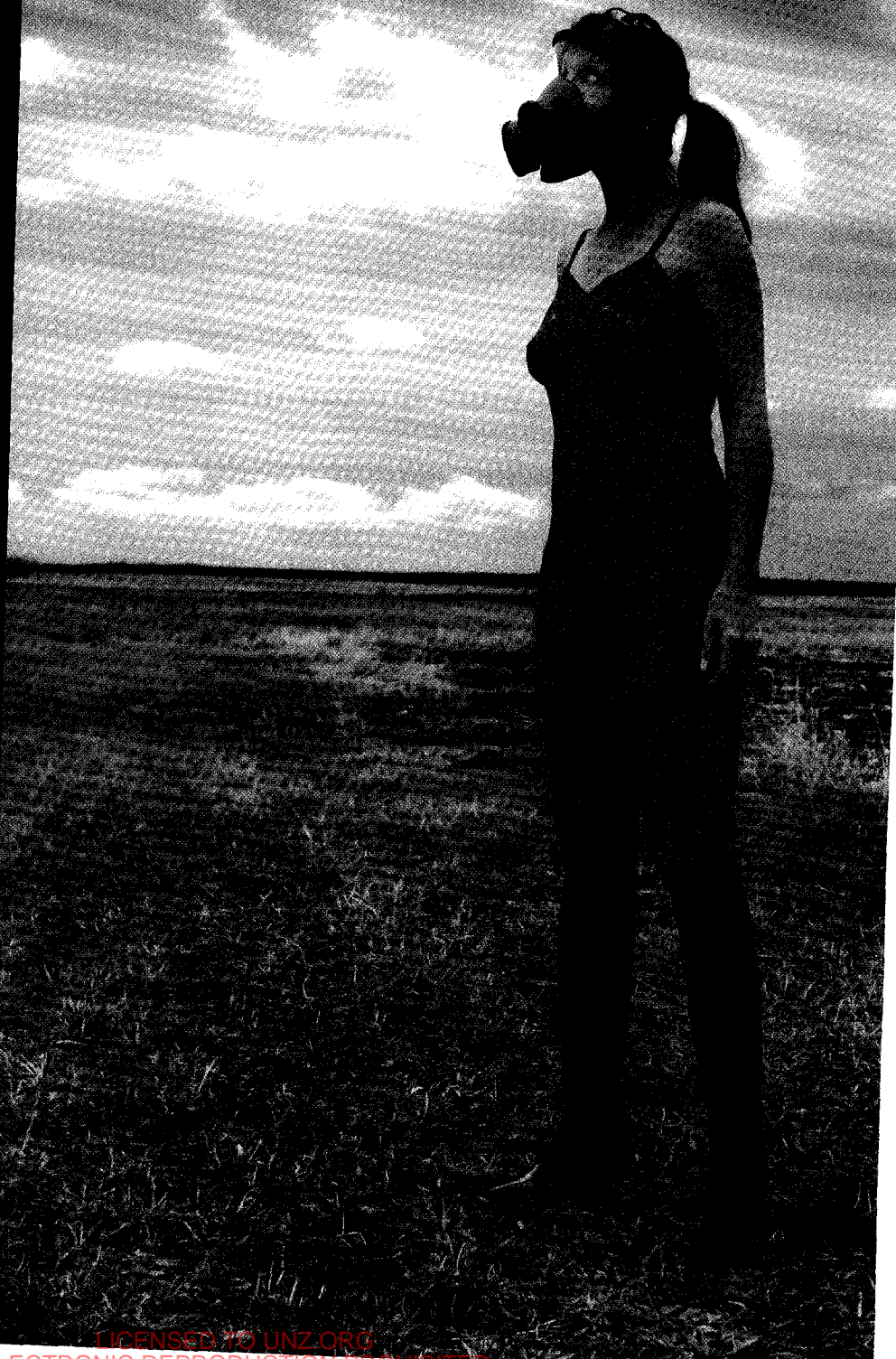
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treaty and then securing the consent of two-thirds of the Senate. The other is a congressional-executive agreement, which involves ordinary legislation and requires only a simple majority in each house of Congress. Treaties have fallen out of favor since the Senate scuttled President Woodrow Wilson's Versailles Treaty in 1919. And though we still use treaties from time to time, the choice between a treaty and a legislative-executive agreement has been largely driven by strategic considerations, rather than any clear constitutional theory. This, Yoo says, is a mistake.

Yoo argues that treaties are required when the United States is making agreements dealing with war and peace, diplomacy, human rights, and arms control, not to mention the treatment of enemy combatants and noncombatants. Since Yoo believes these are exclusive executive powers, he holds that the president is constitutionally free to ignore, revise, or revoke treaties in such areas at will.

According to the Constitution, treaties are the "supreme law of the land." The president lacks the power to suspend laws,

so it would appear that he has no power to suspend treaties. But, admittedly, this is an unresolved issue. Although the Constitution is very clear about what it takes for a treaty to come into effect, it says nothing about what it takes to change or revoke an existing treaty. Congress has not yet formally squared off against presidents who have claimed this power, and the Supreme Court has also dodged the question: "If Congress chooses not to confront the president," Justice Lewis Powell wrote in a 1979 treaty-clause case, "it is not our task to do so."

And though the president should have a free hand in areas Yoo believes are assigned to the executive, whenever an agreement with another country binds and regulates "private individuals and their conduct," congressional legislation is required. If an agreement involves powers and duties expressly assigned to Congress—like raising taxes, regulating commerce, setting criminal penalties or pollution limits—the president must secure the support of Congress and cannot alter or adjust these obligations on his own

authority. Some agreements, of course, involve both foreign-policy and domestic obligations. Those will actually be even harder to put into effect because, in Yoo's view, they require a treaty as well as implementing legislation passed by Congress.

This interpretation would, of course, make it difficult for the president to use his foreign-policy powers to impose domestic obligations. The people would have a chance to be heard—and to block such agreements—through the House of Representatives.

Is Yoo right? He has struggled mightily to build a constitutional fortification allowing broad executive power in foreign affairs, yet barring it at home. But, like France's Maginot Line, his barrier protects one flank, only to leave another dangerously exposed.

Splitting a single, unified constitution into two radically different halves poses real dangers. If a president's powers have no limits when it comes to waging war or protecting national security, how do we stop the president from using those powers at home, not necessarily to sell out American sovereignty, but to evade, suspend, and even override civil liberties, individual rights, and the separation of powers?

We got a taste of this problem from Richard Nixon, who made no secret of his view that his war and foreign-policy powers gave him unrestricted authority at home to ensure national security. Defending his administration's unauthorized use of wiretaps and domestic surveillance in 1973, Nixon insisted that the Constitution itself "permitted and sometimes even required such measures to protect the national security in the public interest." When it came to national security, Nixon argued, no other branch of government could restrict the president. Asked in a television interview about the legality of the Huston Plan, which would have authorized burglary, wiretaps, "black-bag" jobs, and domestic surveillance of domestic opponents of the Vietnam War, Nixon replied, "When the president does it, that means that it is not illegal."

This same, far-from-original understanding lies behind the Bush administration's claims. While in the government,

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Yoo and his Justice Department superior, Jay Bybee, insisted that President Bush on his own authority as commander in chief could order torture (as most would define it) and that Congress had no constitutional authority to intervene. "Even if an interrogation method arguably were to violate" the law as passed by Congress, Bybee and Yoo wrote, "the statute would be unconstitutional" because it would encroach "on the President's constitutional power to conduct a military campaign." Any effort by Congress that "interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional," they concluded.

These interrogations were not taking place on American soil. But this past December, *The New York Times* disclosed that since 2002 the president had ordered the National Security Agency to spy on American citizens on American soil without a warrant. The president's foreign-policy powers, as articulated by Yoo, are the basis of the administration's claims that this surveillance is constitutional.

Since then, President Bush has made it clear that he believes that neither Congress nor the Supreme Court has the authority to check or limit the scope and reach of his power. When Bush signed a defense appropriation bill that included a provision prohibiting U.S. military personnel from subjecting prisoners anywhere in the world to cruel, inhumane, or degrading treatment—a provision the Senate approved by the margin of 90 to 9—Bush attached a statement declaring that the executive branch will construe this provision in a manner consistent with the president's constitutional authority "and consistent with the constitutional limitations on the judicial power," which will assist in achieving the objective of "protecting the American people from further terrorist attacks." Ultimately, Bush is saying we will have a Constitution in which the president's prerogative powers trump any limits, whether those powers are used abroad or at home, whenever a president invokes a claim of national security.

Our system of government, Justice Felix Frankfurter once noted, "no doubt

at times feels the lack of power to act with complete, all-embracing, swiftly moving authority" and "labors under restrictions from which other governments are free." But, said Frankfurter, it "was designed to have such restrictions. The price was deemed not too high in view of the safeguards which these restrictions afford."

If 9-11 really has made that price too high, we must rethink the system as a whole. But Yoo's approach, which splits the existing Constitution in two, is a prescription for disaster that would let the

president wage war and abrogate treaties as he sees fit, with devastating consequences for our foreign policy and, inevitably, for our rights and liberties at home. **TAP**

Gordon Silverstein, assistant professor of political science at the University of California, Berkeley, is the author of Imbalance of Powers: Constitutional Interpretation and the Making of American Foreign Policy and the forthcoming How Law Kills Politics.

BOOKS

THE ACCUSED

FOR GOD AND COUNTRY: FAITH AND PATRIOTISM UNDER FIRE

BY JAMES YEE (WITH AIMEE MOLLOY) PublicAffairs, 240 pages, \$24.00

ONE WOMAN'S ARMY: THE COMMANDING GENERAL OF ABU GHRAIB TELLS HER STORY

BY JANIS KARPINSKI (WITH STEVEN STRASSER) Hyperion, 256 pages, \$24.95

BY KAREN J. GREENBERG

WAR UPENDS ORDINARY LIVES. At times, it can catapult individuals, almost overnight, from modest obscurity into painful notoriety. James Yee and Janis Karpinski—the former charged with treason, the latter with negligent leadership—have seen their lives convulsed, if not undone, by the war on terrorism. Witnesses rather than perpetrators in the larger story of detainee abuse in American military prisons, their complementary stories provide first-person accounts of an interrogation system in which, even according to various Army reports, "[i]mprovisation was the order of the day," leading to "missed opportunities," "ambiguities" in policy, poor leadership, and insufficient oversight resulting in numerous instances of physical abuse and dozens of deaths. Accused of malfeasance, both Karpinski and Yee have, quite naturally, written briefs in their own defense. Despite the evident differences between them, their stories are remarkably alike, not to mention unnervingly close to the military's official narrative.

As a third-generation Chinese American, a West Point graduate, and a Mus-

lim cleric, Captain James Yee appears at first to offer, in his complex persona, an opportunity both to diminish America's dangerous ignorance of the Muslim world and to help meet the demands of the post-9-11 world. Quiet, obedient, and somewhat guileless according to his own description, Yee seems to have been unattached to much of the world beyond his immediate family. A classic down-home, melting-pot American—grateful, successful and patriotic—he dreamed as a kid of playing for the Yankees.

Scratch at the surface, however, and you find another Yee. You discover what, he insists, made him so attractive to the U.S. military yet eventually led to his undoing—namely, his religious conversion. At the age of 23, while serving in the Army in Saudi Arabia after Operation Desert Storm, Yee encountered the teachings of Islam and decided to become a Muslim military cleric. After leaving active duty and joining the inactive reserves, he performed the Hajj twice in a row and enrolled in Abu Noor University in Damascus to pursue a degree in Islamic Studies. His stay in Syria lasted four years and when he returned home, it was with a

Syrian wife of Palestinian descent and their infant daughter.

Then, in 1999, the U.S. Army asked him to re-enlist as a Muslim cleric. As Yee had no religious credentials, military authorities asked the Graduate School of Islamic and Social Studies in Virginia to accept his credits from Abu Noor, which they did. Three years later, in September 2002, Yee was ordered to Guantanamo to serve as the sole Muslim chaplain for detainees and staff.

During a year's service at Guantanamo, Yee witnessed or heard about repeated beatings, regular abuse of the

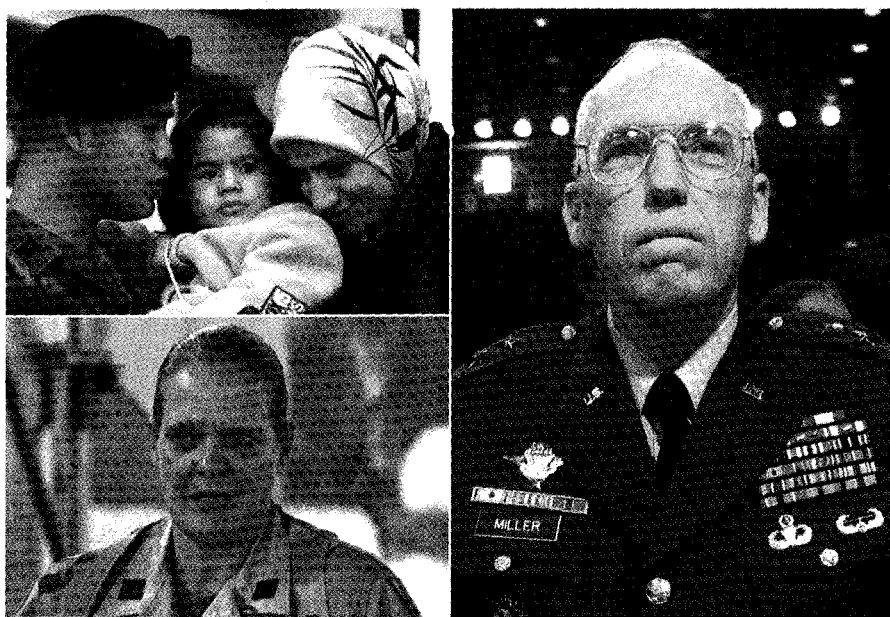
government was ultimately unable to prove its case. Thwarted, the authorities at first tried substituting new charges. Finally, Yee's accusers simply had no choice but to give up. The story, taken as a whole, leaves the reader with the thought that maybe what makes Yee's an American story of our time is simply his survival of injustice.

LIKE YEE, JANIS KARPINSKI, THE military brigade commander on whose watch the Abu Ghraib photos were taken, was deeply committed to the Army and had even decided with her

ing attachment to the Middle East. When Iraq invaded Kuwait, Karpinski was also called first to Saudi Arabia and then to the United Arab Emirates where, for five years, she oversaw a plan to integrate women into the UAE army. Returning home in 1997, Karpinski commanded a reservist battalion in Florida and, after 9-11, was promoted to brigadier general in command of the 3,400 men and women of the 800th MP Brigade in Iraq.

The leadership challenge in Iraq at the time was daunting. Amid mortar fire, without sufficient plumbing or clothing, and without clear instructions about her mission, Karpinski oversaw a network of prisons, including Abu Ghraib. By her account, she was able to maintain control over the situation until the killing of Uday and Qusay Hussein, the "windfall that [also] became our curse." Thereafter, indiscriminate round-ups of Iraqis expanded the population at Abu Ghraib, from 300 to 7,000 in just a few months. Karpinski struggled to do her best in a deteriorating situation until one day in January 2004, when she was presented with photos of detainees stacked naked one atop another, butts in the air, her very own soldiers smirking and giving thumbs up. To this day, Karpinski maintains: "I never had the slightest idea that anything out of the ordinary was happening there." Still, the Taguba investigation into the abuses at Abu Ghraib singled her out for lack of leadership and other failings and recommended that she be reprimanded and removed from her post. Although many of the charges against Karpinski were eventually dropped, she was ultimately charged with dereliction of duty, relieved of command, and demoted from general to colonel. In the ongoing scandal of upper-echelon impunity characteristic of the war on terrorism, she remains the highest-ranking officer to be punished for the practices at Abu Ghraib.

Unlike Yee's Guantanamo, Karpinski's Abu Ghraib is located in a combat zone with thousands of prisoners rather than hundreds. Nevertheless, their accounts echo and reinforce each other in striking ways. Both of them emphasize how ordinary protocols were summarily suspended and official chains of com-



In Time of War the Law Falls Silent: James Yee and Janis Karpinski (left), Geoffrey Miller (right)

Quran, irregularities in the interrogation regime exemplified by the creation of Satanic circles in which detainees were forced to declare that "Satan is [my] God, not Allah," the intentional taunting of prisoners in order to incite conflict, attempts at suicide, and a general pattern of personal humiliation that included publicly visible toilets. Yee tried, tentatively, to intervene in the abusive and dehumanizing treatment of those to whom he was hired to minister. After several such attempts, he was arrested, charged with "mutiny and sedition, aiding the enemy, spying, and espionage," threatened with the death penalty, and tossed into solitary confinement for ten weeks. His house was searched without a warrant, his reputation besmirched. But the

husband of many years that her love of soldiering precluded having children. Though she was in the Reserve at the time of Abu Ghraib, she identified with the career Army. As one of only a few women to join the military police, she had suffered predictable put-downs and come-ons as well as professional neglect. But she had become a jumpmaster, worked for an antiterrorism task force in Germany, and was eventually promoted to captain, taking command of an MP company. Over time, she reports, the constant discrimination against a woman in command began to "wear me down," and after nine and a half years of service, she retired from the active Army and joined the Army Reserve.

Like Yee, Karpinski has a long-stand-

mand circumvented. Yee was told outright that if he received valuable information from detainees he was "not to notify our chain of command," but to go directly to the counterintelligence officer. Though she was the brigade commander, Karpinski was repeatedly left in the dark about policy, especially when it came to cellblocks 1A and 1B, for which she agreed quite early, and with only a handshake, to authorize a transfer of control to military intelligence.

Yee and Karpinski observed not only the breakdown of standard practices, but also what each now says was irresponsible and illegal behavior toward detainees. Although neither provides us with detailed or up-close accounts of the worst bodily cruelties, they both attest credibly to physical abuse. Yee describes the frequent IRFings (use of "initial response force"), which involved beating prisoners in their cages and dragging them to solitary confinement for the slightest infraction. As Yee tells it, the Army *wanted* to perform the IRFings and often taunted the detainees into reacting. Karpinski describes the riots that followed the harsher regime that ensued when military intelligence took over command of Abu Ghraib. The MPs used lethal force to quell the rioting of 1,500 men, leaving three detainees dead.

Their stories converge on one man in particular, General Geoffrey Miller. If the bookish John Yoo opened legal loopholes that eventually permitted torture, Geoffrey Miller was the soldier who stormed through the breach. Famous for "Gitmo-izing" Abu Ghraib, Miller is a dominant figure in both books. Both Yee and Karpinski hold him accountable for the policies they observed and under which they suffered. A two-star general from Texas and commander of Guantanamo, Miller helped initiate the "softening up" process at Abu Ghraib. According to Yee, "General Miller had a saying that he'd often recite to guards when visiting Camp Delta or whenever seeing troopers around the base. 'The fight is on!' This was a subtle way of saying that rules regarding the treatment of detainees were relaxed and infractions were easily overlooked." Yee also reports that "Never pass up an oppor-

tunity to keep your mouth shut!" was Miller's way of reminding troops that what happened at Gitmo was not to be discussed beyond Gitmo's perimeters.

Miller's aphorisms reflected a general harshness at the prison. His policies, according to Yee, targeted Muslims—detainees and soldiers alike—leading Yee to the conclusion that abusing Islam was the Army's most cherished "weapon" inside Guantanamo. Yee asserts also that "in the first few months of General Miller's command, there was a rash of suicide attempts." Yee's comments on Miller need to be read with some skepticism, needless to say. Miller was the one to indict him and to keep the legal battle going as long as possible. But his account differs little from what other sources reveal. Acknowledging Miller's denials, for instance, Karpinski insists that, upon his arrival at Abu Ghraib, Miller told the officers: "Look, the first thing you have to do is treat these prisoners like dogs." Moreover, she associates the arrival of contract interrogators with Miller's new regime.

Both Yee and Karpinski claim that they were assigned to perform an impossible task and then maligned for doing their best. But their mutually reinforcing accounts of Miller are not at all contradicted by the reports on detention and interrogation policies at Abu Ghraib and Guantanamo that have been undertaken or commissioned by the Department of Defense. The Schlesinger Report on Abu Ghraib, for example, released in August 2004, acknowledged that the policy outlining the relationship between military intelligence and military police was basically Miller's creation. The bulk of the Church Report remains classified, but its executive summary states that Miller introduced the new and expanded interrogation techniques to Abu Ghraib in the fall of 2003—only months before the notorious photographs were taken. The Schmidt Report, a military investigation into Guantanamo that was released in July 2005, documents "creative, aggressive, and persistent techniques" with "abusive and degrading impact" under Miller's command. This same report called for a reprimand for Miller, a rec-

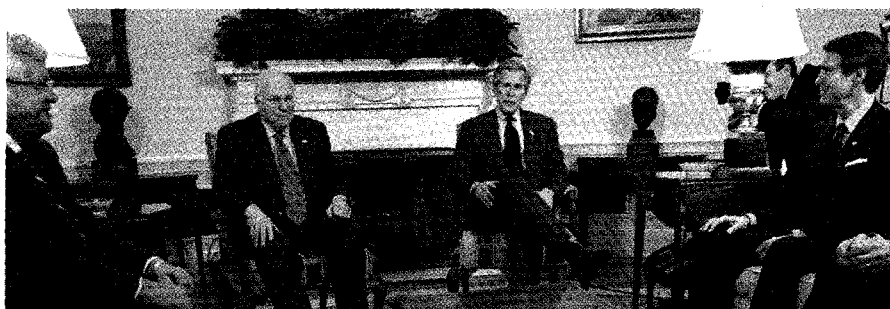
ommendation that was rejected by Miller's superior officer.

The officially commissioned reports corroborate the accounts of Yee and Karpinski in even greater detail when it comes to the overall problems of the Army's detention and interrogation program. The reports cite poor training, inadequate resources, weak leadership (including but not limited to Karpinski's), the opaque role of military intelligence, a confusion about which interrogation manuals were supposed to be followed, and a general disorder in procedures and protocols.

So, what do we learn from these authors that we might not otherwise know? While their descriptions of abuse are reserved and unremarkable, their portrayal of military culture is bracing. Despite their reiterated allegiance to the Army, both Yee and Karpinski depict the Army overall as a troubled institution in dire need of reform. Each of them was set up and persecuted by Army personnel in a range of positions. Their accounts suggest that disarray, tolerance of abusive behavior toward detainees, and a willingness to disregard the law are all too frequent at every level and that the military, consequently, is poorly prepared to act consistently in the country's highest interests.

Both books leave one wondering about remedy. Karpinski hopes that someday the "chain of command going in the other direction," presumably from the top down, will be held accountable. More simply, Yee seeks an apology. "An apology would make us feel confident that our military—the tool with which we defend and encourage American values of justice, equality, tolerance and diversity—truly upholds and defends these principles itself." We all want the military to keep us safe, but that safety depends on the military being able to control itself. These books are cautionary tales about how far short of that goal it now stands. **TAP**

Karen J. Greenberg, the executive director of the Center on Law and Security at the New York University School of Law, is the editor of The Torture Papers: The Road to Abu Ghraib and The Torture Debate in America.



White House Strategy Leak

BY ROBERT B. REICH

THE FOLLOWING IS THE TRANSCRIPT OF A RECENT White House meeting of Speaker of the House Dennis Hastert, Senate Majority Leader Bill Frist, President George W. Bush, Vice President Dick Cheney, and Karl Rove. The Justice Department is probing this leak.

HASTERT and FRIST (hereafter, **H&F**): Thanks for seeing us, Mr. President.

POTUS: Hastie! Billie! Wassup?

H&F: To put it bluntly, Mr. President, we're worried about November. Our members are getting lots of flak back in their states and districts. Some of our guys even want to distance themselves from you.

POTUS: Wha' flak?

H&F: People are saying Republicans aren't competent enough to govern the nation.

ROVE: Just remind them America is at war. We're tough on terrorism. Democrats are weaklings.

H&F: Some people are comparing it to the Katrina disaster. The White House knew the levees were breaking but didn't take action in time, and still can't deal with the aftermath. Even "Brownie" is now taking pot shots.

ROVE: Terrorists were planning to bomb New Orleans long before Katrina. We stopped 'em because we're tough on terrorism. Democrats don't have what it takes.

H&F: Then there's the Medicare drug-benefit fiasco. Seniors still can't get the drugs they need.

ROVE: Terrorists were planning to bomb Sarasota, Phoenix, and West Palm, but we stopped them. We've saved the lives of millions of seniors because we're so damned tough.

H&F: People say the economy is lousy. The budget deficit keeps growing. The trade deficit is at a record high. The Dow is still in the pits. Most peoples' wages are still dropping and their health-care costs are skyrocketing.

ROVE: One new terrorist attack and the whole economy would go to hell. We're saving the economy because we have the guts to do what it takes to fight terrorism. Democrats don't.

H&F: Voters think we're a bunch of crooks. They're still upset about the corporate welfare in those energy and highway bills last summer and all the no-bid contracts to our friends. No offense, Dick, but that includes Halliburton.

CHENEY: Fighting terrorism requires profitable American corporations, including Halliburton. We're doing what it takes to keep them profitable and tough.

H&F: What do we do when Abramoff squeals? That trial is gonna hurt, especially when the press starts printing chummy photos of him and you and every one of us. And when all the White House-DeLay connections come to light.

ROVE: Jack Abramoff got the Indian tribes to help root out terrorism. And the only gifts Tom DeLay ever received were from tough counterterrorists. That's because Republicans have the guts to fight terrorism. Democrats are lily-livered.

H&F: People back home are saying we abuse power, we trample on the Constitution. Lots of them don't want government spying on Americans. They're uncomfortable torturing war prisoners and force-feeding hunger strikers in Guantanamo. They don't think the White House should leak the names of CIA operatives just because their spouses disagree with White House policy.

ROVE: We're doing whatever it takes to keep Americans safe from terrorism. Democrats don't have the stomach.

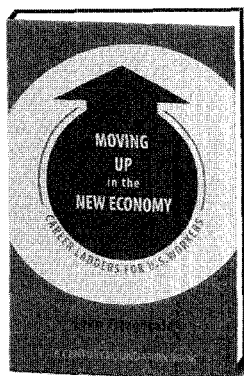
H&F: Is this really all we have to say to keep control of Congress next fall?

ROVE: Yes. Democrats are so weak they haven't figured out how to use all our incompetence, corruption, and abuses of power against us. And they're so gutless they don't know how to respond when we say we're tough on terrorism and they're not.

POTUS: Thanks for droppin' by, guys. Really enjoyed the discussion. **TAP**

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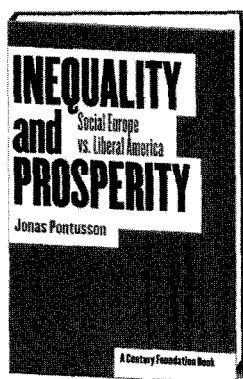
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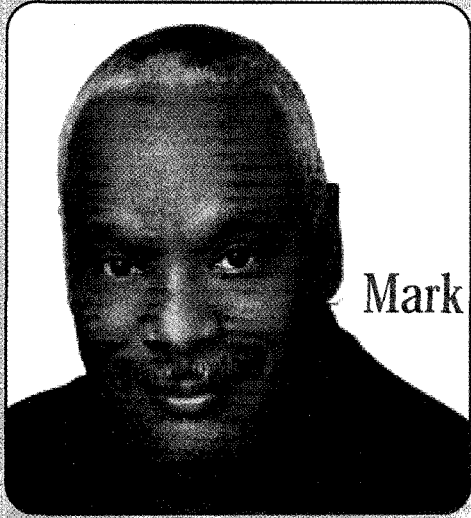
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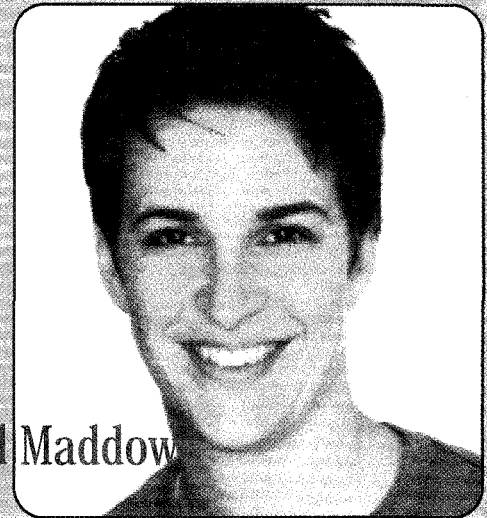
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